



# FEDERAL REGISTER

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Vol. 84                      Wednesday,  
No. 89                      May 8, 2019

Pages 20005–20238

OFFICE OF THE FEDERAL REGISTER



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

## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 214

[CIS No. 2646–19; DHS Docket No. USCIS–2019–0008]

RIN 1615–AC38

## DEPARTMENT OF LABOR

### Employment and Training Administration

### 20 CFR Part 655

[DOL Docket No. ETA–2019–0002]

RIN 1205–AB95

### Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security and Employment and Training Administration and Wage and Hour Division, Department of Labor.

**ACTION:** Temporary rule.

**SUMMARY:** The Secretary of Homeland Security, in consultation with the Secretary of Labor, has decided to increase the numerical limitation on H–2B nonimmigrant visas to authorize the issuance of up to, but not more than, an additional 30,000 visas through the end of Fiscal Year (FY) 2019. The Departments have determined that employers who attest that they are likely to suffer irreparable harm may request these supplemental visas only for workers who were issued an H–2B visa or otherwise granted H–2B status in FY 2016, 2017, or 2018. This increase is based on a time-limited statutory authority and does not affect the H–2B program in future fiscal years. The Departments are promulgating regulations to implement this determination.

**DATES:** This final rule is effective from May 8, 2019 through September 30, 2019, except for 20 CFR 655.67, which is effective from May 8, 2019 through September 30, 2022. The Office of Foreign Labor Certification within the U.S. Department of Labor will be accepting comments in connection with the new information collection Form ETA–9142B–CAA–3 associated with this rule until July 8, 2019.

**ADDRESSES:** You may submit comments on the new information collection Form ETA–9142B–CAA–3, identified by Regulatory Information Number (RIN) 1205–AB95, by any one of the following methods:

*Electronic Comments:* Comments may be sent via <http://www.regulations.gov>, a Federal E-Government website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type in ‘1205–AB95’ (in quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

*Mail:* Address written submissions to (including disk and CD–ROM submissions) to Adele Gagliardi, Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

*Instructions:* Please submit only one copy of your comments by only one method. All submissions must include the agency’s name and the RIN 1205–AB95. Please be advised that comments received will become a matter of public record and will be posted without change to <http://www.regulations.gov>, including any personal information provided. Comments that are mailed must be received by the date indicated for consideration.

*Docket:* For access to the docket to read background documents or comments, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

*Regarding 8 CFR part 214:* Brian J. Hunt, Acting Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Ave. NW, Suite 1100, Washington, DC

20529–2120, telephone (202) 272–8377 (not a toll-free call).

*Regarding 20 CFR part 655:* Thomas M. Dowd, Deputy Assistant Secretary, Employment and Training Administration, Department of Labor, Box #12–200, 200 Constitution Ave. NW, Washington, DC 20210, telephone (202) 513–7350 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

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#### I. Background

##### A. Legal Framework

The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker “having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.” INA section

101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition the Department of Homeland Security (DHS) for classification of prospective temporary workers as H-2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). DHS must approve this petition before the beneficiary can be considered eligible for an H-2B visa. Finally, the INA requires that “[t]he question of importing any alien as [an H-2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],<sup>1</sup> after consultation with appropriate agencies of the Government.” INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

DHS regulations provide that an H-2B petition for temporary employment in the United States must be accompanied by an approved temporary labor certification (TLC) from the Department of Labor (DOL) issued pursuant to regulations established at 20 CFR part 655, 8 CFR 214.2(h)(6)(iii)(A), (C)-(E), (h)(6)(iv)(A); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). The TLC serves as DHS’s consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H-2B employer’s job opportunity and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D).

In order to determine whether to issue a temporary labor certification, the Departments have established regulatory procedures under which DOL certifies whether a qualified U.S. worker is available to fill the job opportunity described in the employer’s petition for a temporary nonagricultural worker, and whether a foreign worker’s employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. The regulations establish the process by which employers obtain a TLC and the rights and obligations of workers and employers.

The INA also authorizes DHS to impose appropriate remedies against an employer for a substantial failure to

meet the terms and conditions of employing an H-2B nonimmigrant worker, or for a willful misrepresentation of a material fact in a petition for an H-2B nonimmigrant worker. INA section 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A). The INA expressly authorizes DHS to delegate certain enforcement authority to DOL. INA section 214(c)(14)(B), 8 U.S.C. 1184(c)(14)(B); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). DHS has delegated its authority under INA section 214(c)(14)(A)(i), 8 U.S.C. 1184(c)(14)(A)(i) to DOL. *See* DHS, Delegation of Authority to DOL under Section 214(c)(14)(A) of the Immigration and Nationality Act (Jan. 16, 2009); *see also* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of, among other things, an H-2B petition and a DOL-approved TLC). This enforcement authority has been delegated within DOL to the Wage and Hour Division (WHD), and is governed by regulations at 29 CFR part 503.

#### *B. H-2B Numerical Limitations Under the INA*

The INA sets the annual number of aliens who may be issued H-2B visas or otherwise provided H-2B nonimmigrant status to perform temporary nonagricultural work at 66,000, to be distributed semi-annually beginning in October and April. *See* INA sections 214(g)(1)(B) and 214(g)(10), 8 U.S.C. 1184(g)(1)(B) and 8 U.S.C. 1184(g)(10). Up to 33,000 aliens may be issued H-2B visas or provided H-2B nonimmigrant status in the first half of a fiscal year, and the remaining annual allocation will be available for employers seeking to hire H-2B workers during the second half of the fiscal year.<sup>2</sup> If insufficient petitions are approved to use all H-2B numbers in a given fiscal year, the unused numbers cannot be carried over for petition approvals in the next fiscal year.

In FY 2005, 2006, 2007, and 2016, Congress exempted H-2B workers identified as returning workers from the annual H-2B cap of 66,000.<sup>3</sup> A returning worker is defined by statute as an H-2B worker who was previously

counted against the annual H-2B cap during a designated period of time. For example, Congress designated that returning workers for FY 2016 needed to have been counted against the cap during FY 2013, 2014, or 2015. DHS and Department of State (DOS) worked together to confirm that all requested workers qualified for the program, *i.e.*, were issued an H-2B visa or provided H-2B status during one of the prior three fiscal years.

Because of the strong demand for H-2B visas in recent years, the statutorily limited semi-annual visa allocation, and the regulatory requirement that employers apply for temporary labor certification 75 to 90 days before the start date of work,<sup>4</sup> employers who wish to obtain visas for their workers under the semi-annual allotment must act early to receive a TLC and file a petition with U.S. Citizenship and Immigration Services (USCIS). As a result, DOL typically sees a significant spike in TLC applications from employers seeking to hire H-2B temporary or seasonal workers prior to the United States’ warm weather months. For example, in FY 2019, based on *Applications for Temporary Labor Certification* filed as of January 8, 2019, DOL’s Office of Foreign Labor Certification (OFLC) received requests to certify more than 96,400 worker positions for start dates of work on April 1, a number nearly three times greater than the entire semi-annual visa allocation. USCIS received sufficient H-2B petitions to meet the second half of the fiscal year regular cap by February 19, 2019.<sup>5</sup> This was the earliest date that the cap was reached in a respective fiscal year since FY 2009 and reflects an ongoing trend of high H-2B program demand. The increased demand is further represented by Congress authorizing additional H-2B workers through the FY 2016 reauthorization of the returning worker cap exemption; the supplemental cap authorized by section 543 of Division F of the Consolidated Appropriations Act,

<sup>4</sup> 20 CFR 655.15(b).

<sup>5</sup> On February 22, 2019, USCIS announced that it had received a sufficient number of petitions to reach the congressionally mandated H-2B cap for FY 2019. On February 19, the number of beneficiaries listed on petitions received by USCIS surpassed the total number of remaining H-2B visas available against the H-2B cap for the second half of FY 2019. In accordance with regulations, USCIS determined it was necessary to use a computer-generated process, commonly known as a lottery, to ensure the fair and orderly allocation of H-2B visa numbers to meet, but not exceed, the remainder of the FY 2019 cap. 8 CFR 214.2(h)(8)(ii)(B). On February 21, USCIS conducted a lottery to randomly select petitions from those received on February 19. As a result, USCIS assigned all petitions selected in the lottery the receipt date of February 22.

<sup>1</sup> As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

<sup>2</sup> The Federal Government’s fiscal year runs from October 1 of the budget’s prior year through September 30 of the year being described. For example, fiscal year 2019 is from October 1, 2018, through September 30, 2019.

<sup>3</sup> INA 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A), *see also* Consolidated Appropriations Act, 2016, Public Law 114-113, div. F, tit. V, sec. 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law. 109-13, div. B, tit. IV, sec. 402.

2017, Public Law 115–31 (FY 2017 Omnibus); section 205 of Division M of the Consolidated Appropriations Act, 2018, Public Law 115–141 (FY 2018 Omnibus); and section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116–6 (FY 2019 Omnibus), which is discussed below.

#### C. FY 2019 Omnibus

On February 15, 2019, the President signed the FY 2019 Omnibus which contains a provision, section 105 of Division H (section 105), permitting the Secretary of Homeland Security, under certain circumstances and after consultation with the Secretary of Labor, to increase the number of H–2B visas available to U.S. employers, notwithstanding the otherwise established statutory numerical limitation. Specifically, section 105 provides that “the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2019 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,” may increase the total number of aliens who may receive an H–2B visa in FY 2019 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation.<sup>6</sup> This rule implements the authority contained in section 105.

In FY 2017, Congress enacted section 543 of Division F of the Consolidated Appropriations Act, 2017, Public Law 115–31, and, in FY 2018, Congress enacted section 205 of Division M of the Consolidated Appropriations Act, 2018, Public Law 115–141. Both statutory provisions were materially identical to section 105 of the FY 2019 Omnibus pertaining to the FY 2017 and FY 2018 H–2B visa allocations. In both FY 2017 and FY 2018, the Secretary of Homeland Security, after consulting with the Secretary of Labor, determined that the needs of some American businesses could not be satisfied in FY 2017 and FY 2018, respectively, with U.S. workers who were willing, qualified, and able to perform temporary nonagricultural labor. Based on these determinations, on July 19, 2017, and

May 31, 2018, respectively, DHS and DOL jointly published temporary final rules allowing an increase of up to 15,000 additional H–2B visas for those businesses that attested to a level of need such that, if they did not receive all of the workers requested on the Petition for a Nonimmigrant Worker (Form I–129), they were likely to suffer irreparable harm, *i.e.*, suffer a permanent and severe financial loss.<sup>7</sup> A total of 12,294 H–2B workers were approved for H–2B classification under petitions filed pursuant to the FY 2017 supplemental cap increase. In FY 2018, USCIS received petitions for more than 15,000 beneficiaries during the first five business days of filing for the supplemental cap, and held a lottery on June 7, 2018. The total number of H–2B workers approved toward the FY 2018 supplemental cap increase was 15,672.<sup>8</sup> The vast majority of the H–2B petitions received under the FY 2017 and FY 2018 supplemental caps requested premium processing and were adjudicated within 15 calendar days.

#### D. Joint Issuance of This Final Rule

As they did in implementing the FY 2017 and FY 2018 Omnibus H–2B supplemental caps,<sup>9</sup> the Departments have determined that it is appropriate to issue this temporary rule jointly. This determination is related to ongoing litigation following conflicting court decisions concerning DOL’s authority to independently issue legislative rules to carry out its consultative and delegated functions pertaining to the H–2B program under the INA.<sup>10</sup> Although DHS and DOL each have authority to independently issue rules implementing their respective duties under the H–2B program, the Departments are implementing section 105 in this manner to ensure there can be no question about the authority underlying the administration and enforcement of

<sup>7</sup> Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program*, 82 FR 32987, 32998 (Jul. 19, 2017); Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program*, 83 FR 24905, 24917 (May 31, 2018).

<sup>8</sup> The number of approved workers exceeded the number of additional visas authorized for FY 2018 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

<sup>9</sup> 82 FR 32987 (Jul. 19, 2017); 83 FR 24905 (May 31, 2018).

<sup>10</sup> See *Outdoor Amusement Bus. Ass’n v. Dep’t of Homeland Sec.*, 334 F. Supp. 3d 697 (D. Md. 2018), appeal docketed, No. 18–2370 (4th Cir. Nov. 15, 2018); see also *Temporary Non-Agricultural Employment of H–2B Aliens in the United States*, 80 FR 24042, 24045 (Apr. 29, 2015).

the temporary cap increase. This approach is consistent with rules implementing DOL’s general consultative role under section 214(c)(1) of the INA, 8 U.S.C. 1184(c)(1), and delegated functions under sections 103(a)(6) and 214(c)(14)(B), 8 U.S.C. 1103(a)(6), 1184(c)(14)(B). See 8 CFR 214.2(h)(6)(iii)(A) & (C), (h)(6)(iv)(A).

## II. Discussion

### A. Statutory Determination

Following consultation with the Secretary of Labor, the Secretary of Homeland Security has determined that the needs of some American businesses cannot be satisfied in FY 2019 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. In accordance with section 105 of the FY 2019 Omnibus, the Secretary of Homeland Security has determined that it is appropriate, for the reasons stated below, to raise the numerical limitation on H–2B nonimmigrant visas by up to an additional 30,000 visas for the remainder of the fiscal year. Consistent with such authority, the Secretary of Homeland Security has decided to increase the H–2B cap for FY 2019 by up to 30,000 additional visas for those American businesses that attest to a level of need such that, if they do not receive all of the workers under the cap increase, they are likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss. These businesses must attest that they will likely suffer irreparable harm and must retain documentation, as described below, supporting this attestation. In addition, the Secretary has determined that employers may only request these supplemental visas for specified H–2B returning workers. Specifically, these individuals must be workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2016, 2017, or 2018.<sup>11</sup>

The Secretary of Homeland Security’s determination to increase the numerical limitation is based, in part, on the conclusion that some businesses risk closing their doors in the absence of a cap increase. Some stakeholders have reported that access to additional H–2B visas is essential to the continued viability of some small businesses that play an important role in sustaining the economy in their states, while others

<sup>11</sup> For purposes of this rule, these returning workers could have been H–2B cap exempt or extended H–2B status in FY 2016, 2017, or 2018. Additionally they may have been previously counted against the annual H–2B cap of 66,000 visas during FY 2016, 2017, or 2018, or the supplemental caps in FY 2017 or FY 2018, or the returning worker provision of FY 2016.

<sup>6</sup> The highest number of returning workers in any such fiscal year was 64,716, which represents the number of beneficiaries covered by H–2B returning worker petitions that were approved for FY 2007. DHS also considered using an alternative approach, under which DHS measured the number of H–2B returning workers admitted at the ports of entry (66,792 for FY 2007).

have stated that an increase is unnecessary and raises the possibility of abuse, by, among other things, creating an incentive for employers who, unable to hire workers under the normal 66,000 annual cap, would misrepresent their actual need in order to hire H-2B workers from amongst the limited number of newly available visa numbers under the Omnibus.<sup>12</sup> The Secretary of Homeland Security has deemed it appropriate, notwithstanding such risk of abuse, to take immediate action to avoid irreparable harm to businesses, specifically, wage and job losses by their U.S. workers, as well as other adverse downstream economic effects.<sup>13</sup>

The decision to afford the benefits of this cap increase to businesses that need workers to avoid irreparable harm, rather than applying the cap increase to any and all businesses seeking temporary workers, is consistent with section 105. Specifically, section 105 provides that the Secretary of Homeland Security, upon satisfaction of the statutory business need standard, may increase the numerical limitation to meet such need.<sup>14</sup> In implementing section 105, the Secretary of Homeland Security, in determining the scope of any such increase, has broad discretion to identify the business needs the Secretary finds most relevant, while bearing in mind the need to protect U.S.

workers. Within that context, for the below reasons, the Secretary has determined to allow an increase solely for the businesses facing the most permanent, severe potential losses.

First, DHS interprets section 105's reference to "the needs of American businesses" as describing a need different than the need required of employers in petitioning for an H-2B worker. Under the generally applicable H-2B program, each individual H-2B employer must demonstrate that it has a temporary need for the services or labor for which they seek to hire H-2B workers. *See* 8 CFR 214.2(h)(6)(ii); 20 CFR 655.6. The use of the term "needs of American businesses," which is not found in INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), or the regulations governing the standard H-2B cap, authorizes the Secretary of Homeland Security to require that employers establish a need above and beyond the normal standard under the H-2B program, *i.e.*, an inability to find sufficient qualified U.S. workers willing and available to perform services or labor and that the employment of the H-2B worker will not adversely affect the wages and working conditions of U.S. workers, *see* 8 CFR 214.2(h)(6)(i)(A), in allocating additional H-2B visas under section 105. DOL concurs with this interpretation.

Second, the approach set forth in this rule limits the increase in a way that is similar to the implementation of the FY 2017 and FY 2018 supplemental caps, and provides protections against adverse effects on U.S. workers that may result from a larger cap increase. Although there is not enough time remaining in FY 2019 to conduct more formal analysis of such effects and the calendar does not lend itself to such additional efforts, the Secretary of Homeland Security has determined that in the particular circumstances presented here, it is appropriate, within the limits discussed below, to tailor the availability of this temporary cap increase to those businesses likely to suffer irreparable harm, *i.e.*, those facing permanent and severe financial loss.

To address the increased, and, in some cases, imminent need for H-2B workers, for FY 2019, the Secretary has determined that employers may only petition for supplemental visas on behalf of workers who were issued an H-2B visa or were otherwise granted H-2B status in FY 2016, 2017, or 2018. The last-three-fiscal-years temporal limitation in the returning worker definition in this temporary rule mirrors the temporal limitation Congress imposed in previous returning worker

statutes.<sup>15</sup> Such workers (*i.e.*, those who recently participated in the H-2B program) have previously obtained H-2B visas and therefore been vetted by DOS, would have departed the United States after their authorized period of stay as generally required by the terms of their nonimmigrant admission, and therefore may obtain their new visas through DOS and begin work more expeditiously.<sup>16</sup>

Limiting the supplemental cap to returning workers is beneficial because these workers have generally demonstrated the willingness to return home after they have completed their temporary labor or services or their period of authorized stay, which is a condition of H-2B status. The returning workers condition therefore provides a basis to believe that H-2B workers under this cap increase will likely return home again after another temporary stay in the United States. That same basis does not exist for non-returning workers, not all of whom have a track record of returning home. Although the returning worker requirement limits the flexibility of employers, the requirement provides an important safeguard, which DHS deems paramount.

Employers must also establish, among other requirements, that insufficient qualified U.S. workers are available to fill the petitioning H-2B employer's job opportunity and that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly employed U.S. workers. INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D); 20 CFR 655.1. To meet this standard, and therefore, in order to be eligible for additional visas under this rule, employers must have applied for and

<sup>15</sup> Consolidated Appropriations Act, 2016, Public Law 114-113, div. F, tit. V, sec. 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law 109-13, div. B, tit. IV, sec. 402.

<sup>16</sup> The Department of State has informed DHS that, in general, H-2B visa applicants who are able to clearly demonstrate having previously abided by the terms of their status granted by DHS tend to be issued at a higher rate when applying to renew their H-2B visa, as compared with the overall visa applicant pool from a given country. Consequently, some consular sections waive the in-person interview requirement for H-2B applicants whose visa expired within the previous 12 months and who otherwise meet the strict limitations set out under INA 222(h), 8 U.S.C. 1202(h). Non-returning workers cannot meet the statutory criteria under INA 222(h)(1)(B) for an interview waiver. The previous review of an applicant's qualifications and current evidence of lawful travel to the United States will generally lead to a shorter processing time of a renewal application.

<sup>12</sup> Other stakeholders have reported abuses of the H-2B program. For example, the Government Accountability Office has recommended increased worker protections in the H-2B program based on certain abuses of the program by unscrupulous employers and recruiters. *See* U.S. Government Accountability Office, *H-2A and H-2B Visa Programs: Increased Protections Needed for Foreign Workers*, GAO-15-154 (Washington, DC, revised 2017), <http://www.gao.gov/assets/690/684985.pdf> (last visited Apr. 9, 2019); U.S. Government Accountability Office, *H-2B Visa Program: Closed Civil Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse*, GAO-10-1053 (Washington, DC, 2010), <http://www.gao.gov/assets/320/310640.pdf> (last visited Apr. 9, 2019); *see also* Testimony of Stephen G. Bronars, *The Impact of the H-2B Program on the U.S. Labor Market, before the Senate Subcommittee on Immigration and the National Interest* (June 8, 2016), [https://www.judiciary.senate.gov/imo/media/doc/06-08-16 Bronars Testimony.pdf](https://www.judiciary.senate.gov/imo/media/doc/06-08-16%20Bronars%20Testimony.pdf) (last visited Apr. 9, 2019); *Preliminary Analysis of the Economic Impact of the H-2B Worker Program on Virginia's Economy*, Thomas J. Murray (Sept. 2011), <http://web.vims.edu/GreyLit/VIMS/mrr11-12.pdf> (last visited Apr. 9, 2019).

<sup>13</sup> *See* Randel K. Johnson & Tamar Jacoby, U.S. Chamber of Commerce & ImmigrationWorks USA, *The Economic Impact of H-2B Workers* (Oct. 28, 2010), available at [https://www.uschamber.com/sites/default/files/documents/files/16102\\_LABR%2520H2BReport\\_LR.pdf](https://www.uschamber.com/sites/default/files/documents/files/16102_LABR%2520H2BReport_LR.pdf) (last visited Mar. 4, 2019).

<sup>14</sup> DHS believes it is reasonable to infer that Congress intended, in enacting the FY 2019 Omnibus, to authorize the Secretary to allocate any new H-2B visas authorized under section 105 to the entities with the "business need" that serves as the basis for the increase.

received a valid TLC in accordance with 8 CFR 214.2(h)(6)(iv)(A) and (D), and 20 CFR part 655, subpart A. Under DOL's H-2B regulations, TLCs expire on the last day of authorized employment. 20 CFR 655.55(a). In order to have an unexpired TLC, therefore, the date on the employer's visa petition must not be later than the last day of authorized employment on the TLC. This rule also requires an additional recruitment for certain petitioners, as discussed below.

In sum, this rule increases the FY 2019 numerical limitation by up to 30,000 visas to ensure a sufficient number of visas to allow for increased need for H-2B workers, but also restricts the availability of such additional visas by prioritizing only the most significant business needs and limiting eligibility to H-2B returning workers. These provisions are each described in turn below.

#### B. Numerical Increase of Up to 30,000 Visas

DHS expects the increase of up to 30,000 visas<sup>17</sup> to be sufficient to meet the urgent need of eligible employers for additional H-2B workers for the remainder of FY 2019. The determination to allow up to 30,000 additional H-2B visas is based on the increased demand for supplemental visas in FY 2018 over FY 2017, H-2B returning worker data, and the amount of time remaining for employers to hire and obtain H-2B workers in the fiscal year.

Section 105 of the FY 2019 Omnibus sets the highest number of H-2B returning workers<sup>18</sup> who were exempt

<sup>17</sup> In contrast with section 214(g)(1) of the INA, 8 U.S.C. 1184(g)(1), which establishes a cap on the number of individuals who may be issued visas or otherwise provided H-2B status, and section 214(g)(10) of the INA, 8 U.S.C. 1184(g)(10) (emphasis added), which imposes a first half of the fiscal year cap on H-2B issuance with respect to the number of individuals who may be issued visas or are accorded [H-2B] status (emphasis added), section 105 only authorizes DHS to increase the number of available H-2B visas. Accordingly, DHS will not permit individuals authorized for H-2B status pursuant to an H-2B petition approved under section 105 to change to H-2B status from another nonimmigrant status. See INA section 248, 8 U.S.C. 1258; see also 8 CFR part 248. If a petitioner files a petition seeking H-2B workers in accordance with this rule and requests a change of status on behalf of someone in the United States, the change of status request will be denied, but the petition will be adjudicated in accordance with applicable DHS regulations. Any alien authorized for H-2B status under the approved petition would need to obtain the necessary H-2B visa at a consular post abroad and then seek admission to the United States in H-2B status at a port of entry.

<sup>18</sup> During fiscal years 2005 to 2007, and 2016, Congress enacted "returning worker" exemptions to the H-2B visa cap, allowing workers who were counted against the H-2B cap in one of the three preceding fiscal years not to be counted against the upcoming fiscal year cap. Save Our Small and

from the cap in previous years as the maximum limit for any increase in the H-2B numerical limitation for FY 2019. Consistent with the statute's reference to H-2B returning workers, in determining the appropriate number by which to increase the H-2B numerical limitation, the Secretary of Homeland Security focused on the number of visas allocated to returning workers in years in which Congress enacted returning worker exemptions from the H-2B numerical limitation. During each of the years the returning worker provision was in force, U.S. employers' standard business needs for H-2B workers exceeded the normal 66,000 cap. The highest number of H-2B returning workers approved was 64,716 in FY 2007. In setting the number of additional H-2B visas to be made available during FY 2019, DHS considered this number, overall indications of increased need, and the time remaining in FY 2019, and determined that it would be appropriate to limit the supplemental cap to approximately half of the highest number for returning workers, or up to 30,000.

Available data indicates that need for supplemental H-2B visas in FY 2019 will exceed the previous supplemental caps. In FY 2018, USCIS received petitions for approximately 29,000 beneficiaries during the first 5 business days of filing for the 15,000 supplemental cap. USCIS therefore conducted a lottery on June 7, 2018, to randomly select petitions that would be accepted under the supplemental cap. Of the petitions that were selected, USCIS issued approvals for 15,672 beneficiaries.

Given indications of increased demand in the H-2B program overall and the FY 2018 supplemental cap relative to prior year supplemental caps, the Secretary of Homeland Security has considered both FY 2007 data in which the highest number of returning workers approved was 64,716, and the previous cap determinations. The Secretary has determined that authorizing up to 30,000 additional visas, which is approximately half of the highest number of returning worker visas approved for H-2B beneficiaries in FY 2007 as well as almost half of the regular H-2B cap, will better ensure that additional H-2B visas will be available

Seasonal Businesses Act of 2005, Public Law 109-13, Sec. 402 (May 11, 2005); John Warner National Defense Authorization Act, Public Law 109-364, Sec. 1074 (Oct. 17, 2006); Consolidated Appropriations Act of 2016, Public Law 114-113, Sec. 565 (Dec. 18, 2015).

to businesses that need H-2B workers.<sup>19</sup> The 30,000 limit also takes into account the increased demand for workers that the Departments witnessed with respect to the FY 2018 supplemental cap, and the fact that the FY 2019 supplemental cap is being implemented at approximately the same time in the year that the FY 2018 supplemental cap was implemented.<sup>20</sup> Additionally, the Secretary has determined that authorizing returning workers will best protect the integrity of the H-2B visa program and the U.S. workforce, and will also help those businesses who may suffer irreparable harm.

#### C. Returning Workers

Although the increase of up to 30,000 additional workers is higher than previous years, the Secretary has determined that the supplemental visas should only be granted to returning workers from the past three fiscal years, in order to meet the immediate need for H-2B workers. The Secretary has determined that for purposes of this program, H-2B returning workers include those individuals who were issued an H-2B visa or were otherwise granted H-2B status in FY 2016, 2017, or 2018. As discussed above, the Secretary determined that limiting returning workers to those who were issued an H-2B visa or granted H-2B status in the past three fiscal years is appropriate as it mirrors the previous standard that Congress designated in previous returning worker provisions. As also discussed above, returning workers have previously obtained H-2B visas and therefore been vetted by DOS, would have departed the United States after their authorized period of stay as generally required by the terms of their nonimmigrant admission, and therefore may obtain their new visas through DOS and begin work more expeditiously.

To ensure compliance with the requirement that additional visas only be made available to returning workers,

<sup>19</sup> In FY 2007, the returning worker provision was authorized in October 2006, with approximately 11 months for employers to petition for H-2B workers. In contrast, upon publication of this rule, employers will only have approximately 5 months to file for additional H-2B workers.

<sup>20</sup> USCIS recognizes it may have received petitions for more than 29,000 supplemental H-2B workers if the cap had not been exceeded within the first five days of opening. However, DHS estimates that not all of the 29,000 workers requested under the FY 2018 supplemental cap would have been approved and/or issued visas. For instance, although DHS approved petitions for 15,672 beneficiaries under the FY 2018 cap increase, the Department of State data shows that as of January 15, 2019, it issued only 12,243 visas under that cap increase. Similarly, DHS approved petitions for 12,294 beneficiaries under the FY 2017 cap increase, but the Department of State data shows that it issued only 9,160 visas.

petitioners seeking H-2B workers under the supplemental cap will be required to attest that each employee requested or instructed to apply for a visa under the FY 2019 supplemental cap was issued an H-2B visa or otherwise granted H-2B status in FY 2016, 2017, or 2018. The attestation will serve as prima facie initial evidence to DHS that each worker meets the returning worker requirement. DHS and DOS retain the right to review and verify that each beneficiary is in fact a returning worker any time before and after approval of the petition or visa. OFLC will have the sole authority within DOL to review documentation supporting this attestation during the course of an audit examination or based on information obtained or received from DHS or other appropriate agencies.

*D. Business Need Standard—Irreparable Harm and FY 2019 Attestation*

To file an H-2B petition during the remainder of FY 2019, petitioners must meet all existing H-2B eligibility requirements, including having an approved, valid, and unexpired TLC. See 8 CFR 214.2(h)(6) and 20 CFR part 655, subpart A. In addition, the petitioner must submit an attestation to USCIS in which the petitioner affirms, under penalty of perjury, that it meets the business need standard set forth above. Under that standard, the petitioner must be able to establish that if it does not receive all of the workers requested under the cap increase,<sup>21</sup> it is likely to suffer irreparable harm, that is, permanent and severe financial loss. Although the TLC process focuses on establishing whether a petitioner has a need for workers, the TLC does not directly address the harm a petitioner may face in the absence of such workers; the attestation addresses this question. The attestation must be submitted directly to USCIS, together with Form I-129, the approved and valid TLC, and any other necessary documentation.

The attestation will serve as prima facie initial evidence to DHS that the petitioner's business is likely to suffer irreparable harm. Any petition received lacking the requisite attestation may be denied in accordance with 8 CFR 103.2(b)(8)(ii). Although this regulation does not require submission of evidence at the time of filing of the petition, other than an attestation, the employer must have such evidence on hand and ready to present to DHS, DOL, or DOS at any time starting with the date of filing,

through the prescribed document retention period discussed below.

In addition to the statement regarding the irreparable harm standard, the attestation will also state that the employer: Meets all other eligibility criteria for the available visas, including the returning worker requirement; will comply with all assurances, obligations, and conditions of employment set forth in the *Application for Temporary Employment Certification* (Form ETA 9142B and Appendix B) certified by DOL for the job opportunity (which serves as the TLC); will conduct additional recruitment of U.S. workers in accordance with this rulemaking; and will document and retain evidence of such compliance. Because the attestation will be submitted to USCIS as initial evidence with Form I-129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including, but not limited to, because the employer failed to demonstrate employment of all of the requested workers as required under the irreparable harm standard, or because the employer failed to demonstrate that it requested and/or instructed that each worker petitioned was a returning worker as required by this rule. Any denial or revocation on such basis, however, would be appealable under 8 CFR part 103, consistent with existing USCIS procedures.

It is the view of the Secretaries of Homeland Security and Labor that requiring a post-TLC attestation to USCIS is sufficiently protective of U.S. workers given that the employer, in completing the TLC process, has already made one unsuccessful attempt to recruit U.S. workers. In addition, the employer is required to retain documentation, which must be provided upon request, supporting the new attestations, including a recruitment report for any additional recruitment required under this rule. Although the employer must have such documentation on hand at the time it files the petition, the Departments have determined that if employers were required to submit the attestations to DOL before seeking a petition from DHS or to complete any additional recruitment required before submitting a petition, the attendant delays would render any visas unlikely to satisfy the needs of American businesses given processing timeframes and the time remaining in this fiscal year. USCIS may issue a notice of intent to revoke and

request additional evidence, or issue a revocation notice, based on such documentation, and DOL's OFLC and WHD will be able to review this documentation and enforce the attestations during the course of an audit examination or investigation. See 8 CFR 103.2(b) or 8 CFR 214.2(h)(11).

In accordance with the attestation requirement, under which petitioners attest that they meet the irreparable harm standard and that they are seeking to only employ returning workers, and the document retention requirements at 20 CFR 655.67, the petitioner must retain documents and records meeting their burden to demonstrate compliance with this rule for 3 years, and must provide the documents and records upon the request of DHS or DOL, such as in the event of an audit or investigation. Supporting evidence may include, but is not limited to, the following types of documentation:

(1) Evidence that the business is or would be unable to meet financial or contractual obligations without H-2B workers, including evidence of contracts, reservations, orders, or other business arrangements that have been or would be cancelled absent the requested H-2B workers, and evidence demonstrating an inability to pay debts/bills;

(2) Evidence that the business has suffered or will suffer permanent and severe financial loss during the period of need, as compared to the period of need in prior years, such as financial statements (including profit/loss statements) comparing the present period of need to prior years; bank statements, tax returns, or other documents showing evidence of current and past financial condition; and relevant tax records, employment records, or other similar documents showing hours worked and payroll comparisons from prior years to current year;

(3) Evidence showing the number of workers needed in previous seasons to meet the employer's temporary need as compared to those currently employed, including the number of H-2B workers requested, the number of H-2B workers actually employed, the dates of their employment, and their hours worked (for example, payroll records), particularly in comparison to the weekly hours stated on the TLC. In addition, for employers that obtain authorization to employ H-2B workers under this rule, evidence showing the number of H-2B workers requested under this rule, the number of workers actually employed, including H-2B workers, the dates of their employment, and their hours worked (for example,

<sup>21</sup> An employer may request fewer workers on the H-2B petition than the number of workers listed on the TLC.

payroll records), particularly in comparison to the weekly hours stated on the TLC;

(4) Evidence that the business is dependent on H-2B workers, such as documentation showing the number of H-2B workers compared to U.S. workers needed prospectively or in the past; business plan or reliable forecast showing that, due to the nature and size of the business, there is a need for a specific number of H-2B workers; and

(5) Evidence that the employer requested and/or instructed that each of the workers petitioned by the employer in connection with this temporary rule were issued H-2B visas or otherwise granted H-2B status in FY 2016, 2017, or 2018. Such evidence would include, but is not limited to, a date-stamped written communication from the employer to its agent(s) and/or recruiter(s) that instructs the agent(s) and/or recruiter(s) to only recruit and provide instruction regarding an application for an H-2B visa to those foreign workers who were previously issued an H-2B visa or granted H-2B status in FY 2016, 2017, or 2018.

This temporary rule does not apply to workers who have already been counted under the fiscal year 2019 H-2B (66,000) cap. Further, this rule does not apply to persons who are exempt from the fiscal year 2019 H-2B cap, including those who are extending their stay in H-2B status. Accordingly, petitioners who are filing on behalf of such workers are not subject to the attestation requirement.

These examples are not exclusive, nor will they necessarily establish that the business meets the irreparable harm or returning worker standards; petitioners may retain other types of evidence they believe will satisfy these standards. If an audit or investigation occurs, DHS or DOL will review all evidence available to it to confirm that the petitioner properly attested to DHS that their business would likely suffer irreparable harm and that they petitioned for and employed only returning workers. If DHS subsequently finds that the evidence does not support the employer's attestation, DHS may deny or, if the petition has already been approved, revoke the petition at any time consistent with existing regulatory authorities. DHS may also, or alternatively, notify DOL. In addition, DOL may independently take enforcement action, including by, among other things, debarbing the petitioner from the H-2B program generally for not less than one year or more than 5 years from the date of the final agency decision which also disqualifies the debarred party from

filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision. *See, for example, 20 CFR 655.73; 29 CFR 503.20, 503.24.*<sup>22</sup>

To the extent that evidence reflects a preference for hiring H-2B workers over U.S. workers, an investigation by other agencies enforcing employment and labor laws, such as the Immigrant and Employee Rights Section (IER) of the Department of Justice's Civil Rights Division, may be warranted. *See INA section 274B, 8 U.S.C. 1324b* (prohibiting certain types of employment discrimination based on citizenship status or national origin). Moreover, DHS and DOL may refer potential discrimination to IER pursuant to applicable interagency agreements. *See IER, Partnerships, <https://www.justice.gov/crt/partnerships>* (last visited Apr. 9, 2019). In addition, if members of the public have information that a participating employer may be abusing this program, DHS invites them to notify USCIS's Fraud Detection and National Security Directorate by contacting the general H-2B complaint address at [ReportH2BAbuse@uscis.dhs.gov](mailto:ReportH2BAbuse@uscis.dhs.gov).<sup>23</sup>

DHS, in exercising its statutory authority under INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), and section 105 of the FY 2019 Omnibus, is responsible for adjudicating eligibility for H-2B classification. As in all cases, the burden rests with the petitioner to establish eligibility by a preponderance of the evidence. INA section 291, 8 U.S.C. 1361. Accordingly, as noted above, where the petition lacks initial evidence, such as a properly completed attestation, DHS may deny the petition in accordance with 8 CFR 103.2(b)(8)(ii). Further, where the initial evidence submitted with the petition contains inconsistencies or is inconsistent with other evidence in the petition and underlying TLC, DHS may issue a Request for Evidence, Notice of Intent to

<sup>22</sup> Pursuant to the statutory provisions governing enforcement of the H-2B program, INA section 214(c)(14), 8 U.S.C. 1184(c)(14), a violation exists under the H-2B program where there has been a willful misrepresentation of a material fact in the petition or a substantial failure to meet any of the terms and conditions of the petition. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions. *See, e.g., 29 CFR 503.19.*

<sup>23</sup> DHS may publicly disclose information regarding the H-2B program consistent with applicable law and regulations. For information about DHS disclosure of information contained in a system of records see <https://www.dhs.gov/system-records-notices-sorns>. Additional general information about DHS privacy policy generally can be accessed at <https://www.dhs.gov/policy>.

Deny, or Denial in accordance with 8 CFR 103.2(b)(8). In addition, where it is determined that an H-2B petition filed pursuant to the FY 2019 Omnibus was granted erroneously, the H-2B petition approval may be revoked. *See 8 CFR 214.2(h)(11).*

Because of the particular circumstances of this regulation, and because the attestation plays a vital role in achieving the purposes of this regulation, DHS and DOL intend that the attestation requirement be non-severable from the remainder of the regulation. Thus, in the event the attestation requirement is enjoined or held invalid, the remainder of the regulation, with the exception of the retention requirements being codified in 20 CFR 655.67, is also intended to cease operation in the relevant jurisdiction, without prejudice to workers already present in the United States under this regulation, as consistent with law.

#### E. DHS Petition Procedures

To petition for H-2B workers under this rule, the petitioner must file a Form I-129 in accordance with applicable regulations and form instructions, an unexpired TLC, and the attestation described above. *See new 8 CFR 214.2(h)(6)(x).* The attestation must be filed on Form ETA-9142-B-CAA-3, Attestation for Employers Seeking to Employ H-2B Nonimmigrants Workers Under Section 105 of Division H of the Consolidated Appropriations Act. *See 20 CFR 655.64.* A petitioner is required to retain a copy of such attestation and all supporting evidence for 3 years from the date the associated TLC was approved, consistent with 20 CFR 655.56 and 29 CFR 503.17. *See new 20 CFR 655.67.* Petitions submitted pursuant to the FY 2019 Omnibus will be processed in the order in which they were received. Petitioners may also choose to request premium processing of their petition under 8 CFR 103.7(e), which allows for expedited processing for an additional fee.

To encourage timely filing of any petition seeking a visa under the FY 2019 Omnibus, DHS is notifying the public that the petition may not be approved by USCIS on or after October 1, 2019. *See new 8 CFR 214.2(h)(6)(x).* Petitions pending with USCIS that are not approved before October 1, 2019, will be denied and any fees will not be refunded. *See new 8 CFR 214.2(h)(6)(x).*

USCIS's current processing goals for H-2B petitions that can be adjudicated without the need for further evidence (*i.e.*, without a Request for Evidence or Notice of Intent to Deny) are 15 days for petitions requesting premium processing and 30 days for standard

processing.<sup>24</sup> Given USCIS' processing goals for premium processing, DHS believes that 15 days from the end of the fiscal year is the minimum time needed for petitions to be adjudicated, although USCIS cannot guarantee the time period will be sufficient in all cases. Therefore, if the increase in the H-2B numerical limitation to 30,000 visas has not yet been reached, USCIS will stop accepting petitions received after September 16, 2019.<sup>25</sup> See new 8 CFR 214.2(h)(6)(x)(C). Such petitions will be rejected and the filing fees will be returned.

As with other Form I-129 filings, DHS encourages petitioners to provide a duplicate copy of Form I-129 and all supporting documentation at the time of filing if the beneficiary is seeking a nonimmigrant visa abroad. Failure to submit duplicate copies may cause a delay in the issuance of a visa to otherwise eligible applicants.<sup>26</sup>

#### F. DOL Procedures

All employers are required to have an approved and valid TLC from DOL in order to file a Form I-129 petition with DHS. See 8 CFR 214.2(h)(6)(iv)(A) and (D). Employers with an approved TLC will have already conducted recruitment, as set forth in 20 CFR 655.40 through 655.48, to determine whether U.S. workers are qualified and available to perform the work for which H-2B workers are sought.

In addition to the recruitment already conducted in connection with a valid TLC, in order to ensure the recruitment does not become stale, employers with current TLCs must conduct a fresh round of recruitment for U.S. workers if they file an I-129 petition 45 or more days after the certified start date of work on the TLC. As noted in the 2015 H-2B Interim Final Rule, U.S. workers seeking employment in temporary non-agricultural jobs typically do not search for work months in advance, and cannot make commitments about their

availability for employment far in advance of the work start date. See 80 FR 24041, 24061, 24071. Given that the labor certification process generally begins 75 to 90 days in advance of the employer's start date of work, employer recruitment typically occurs between 40 and 60 days before that date. Therefore, employers with TLCs containing a start date of work on April 1, 2019 likely began their recruitment around February 1, 2019 and likely ended it about February 20, 2019; thus, their recruitment continues to be valid. In order to provide U.S. workers a realistic opportunity to pursue jobs for which employers will be seeking foreign workers under this rule, the Departments have determined that if employers file the petition 45 or more days after their dates of need, they have not conducted recent enough recruitment so that the Departments can reasonably conclude that there are currently an insufficient number of U.S. workers qualified, willing, and available to perform the work absent an additional, though abbreviated, recruitment attempt. The 45-day threshold for additional recruitment identified in this rule reflects a timeframe between the end of the employer's recruitment and filing of the petition similar to that provided under the FY 2017 and FY 2018 H-2B supplemental cap rules.

Therefore, only those employers with still-valid TLCs with a start date of work that is 45 or more days before the date they file a petition will be required to conduct additional recruitment, and attest that the recruitment will be conducted, as follows. The employer must place a new job order for the job opportunity with the State Workforce Agency (SWA), serving the area of intended employment. The job order must contain the job assurances and contents set forth in 20 CFR 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 5 days beginning not later than the next business day after submitting a petition for H-2B workers to USCIS. The employer must also follow all applicable SWA instructions for posting job orders and receive applications in all forms allowed by the SWA, including online applications. In addition, eligible employers will also be required to place one newspaper advertisement, which may be published online or in print on any day of the week, meeting the advertising requirements of 20 CFR 655.41, during the period of time the SWA is actively circulating the job order for intrastate clearance. Employers must retain the

additional recruitment documentation, including a recruitment report that meets the requirements for recruitment reports set forth in 20 CFR 655.48(a)(1), (2), and (7), together with a copy of the attestation and supporting documentation, as described above, for a period of 3 years from the date that the TLC was approved, consistent with the document retention requirements under 20 CFR 655.56. These requirements are similar to those that apply to certain seafood employers who stagger the entry of H-2B workers under 20 CFR 655.15(f).

The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until 2 business days after the last date on which the job order is posted. The 2 business day requirement permits a brief additional period of time to enable U.S. workers to contact the employer following the job order or newspaper advertisement. Consistent with 20 CFR 655.40(a), applicants can be rejected only for lawful job-related reasons.

DOL's WHD has the authority to investigate the employer's attestations, as the attestations are a required part of the H-2B petition process under this rule and the attestations rely on the employer's existing, approved TLC. Where a WHD investigation determines that there has been a willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations, WHD may institute administrative proceedings to impose sanctions and remedies, including (but not limited to) assessment of civil money penalties, recovery of wages due, make whole relief for any U.S. worker who has been improperly rejected for employment, laid off or displaced, and/or debarment for 1 to 5 years. See 29 CFR 503.19, 503.20. This regulatory authority is consistent with WHD's existing enforcement authority and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.67, the petitioner must retain documents and records evidencing compliance with this rule, and must provide the documents and records upon request by DHS or DOL.

DHS has the authority to verify any information submitted to establish H-2B eligibility at any time before or after the petition has been adjudicated by USCIS. See, e.g., INA section 103, 204, and 214 (8 U.S.C. 1103, 1154, 1184) and 8 CFR part 103 and section 214.2(h). DHS's verification methods may include, but are not limited to, review of public records and information; contact via written correspondence or telephone;

<sup>24</sup> These processing goals are not binding on USCIS; depending on the evidence presented, actual processing times may vary from these 15- and 30-day periods.

<sup>25</sup> In FY 2017, USCIS used September 15th as the cutoff date for accepting petitions filed under the supplemental cap. The 15 days for processing was tied to the Premium Processing clock. However, in FY 2018 and FY 2019, September 15th is on a Saturday and Sunday, respectively, when USCIS does not accept petitions. USCIS has revised this date accordingly to remain consistent with the expectation of adjudication within the premium processing clock and to avoid potential confusion and frustration from petitioners who might have otherwise expected their petitions to be received on the 15th but would instead face rejection.

<sup>26</sup> Petitioners should note that under section 105, the H-2B numerical increase relates to the total number of aliens who may receive a visa under section 101(a)(15)(H)(ii)(b) of the INA in this fiscal year.

unannounced physical site inspections; and interviews. USCIS will use information obtained through verification to determine H-2B eligibility and assess compliance with the requirements of the H-2B program. Subject to the exceptions described in 8 CFR 103.2(b)(16), USCIS will provide petitioners with an opportunity to address any adverse information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on a petition or after the agency has initiated an adverse action that may result in revocation or termination of an approval.

DOL's OFLC already has the authority under 20 CFR 655.70 to conduct audit examinations on adjudicated *Applications for Temporary Employment Certification*, including all appropriate appendices, and verify any information supporting the employer's attestations. DOL considers the Form ETA-9142B-CAA-3 to be an appendix to the *Application for Temporary Employment Certification* and the attestations contained on the Form ETA-9142B-CAA-3 and documentation supporting the attestations to be evidence that is incorporated into and a part of the approved TLC. Where an audit examination or review of information from DHS or other appropriate agencies determines that there has been fraud or willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations or failure to comply with the audit examination process, OFLC may institute appropriate administrative proceedings to impose sanctions on the employer. These sanctions may result in revocation of an approved TLC, the requirement that the employer undergo assisted recruitment in future filings of an *Application for Temporary Employment Certification* for a period of up to 2 years, and/or debarment from the H-2B program and any other foreign labor certification program administered by the DOL for 1 to 5 years. See 29 CFR 655.71, 655.72, 655.73. Additionally, OFLC has the authority to provide any finding made or documents received during the course of conducting an audit examination to the DHS, WHD, IER, or other enforcement agencies. OFLC's existing audit authority is independently authorized, and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.67, the petitioner must retain documents and records proving compliance with this rule, and

must provide the documents and records upon request by DHS or DOL.

Petitioners must also comply with any other applicable laws, such as avoiding unlawful discrimination against U.S. workers based on their citizenship status or national origin. Specifically, the failure to recruit and hire qualified and available U.S. workers on account of such individuals' national origin or citizenship status may violate INA section 274B, 8 U.S.C. 1324b.

### III. Statutory and Regulatory Requirements

#### A. Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act (APA). 5 U.S.C. 553(b) and (d).

##### 1. Good Cause To Forgo Notice and Comment Rulemaking

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The good cause exception for forgoing notice and comment rulemaking "excuses notice and comment in emergency situations, or where delay could result in serious harm." *Jifry v. FAA*, 370 F.3d 1174, 1179 (DC Cir. 2004). Although the good cause exception is "narrowly construed and only reluctantly countenanced," *Tenn. Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (DC Cir. 1992) the Departments have appropriately invoked the exception in this case, for the reasons set forth below.

In this case, the Departments are bypassing advance notice and comment because of the exigency created by section 105 of Div. H of the Consolidated Appropriations Act, 2019 (FY 2019 Omnibus), which went into effect on February 15, 2019, and expires on September 30, 2019. USCIS received more than enough petitions to meet the H-2B visa statutory cap for the second half of FY 2019 on February 19, 2019, which is 8 days earlier than when the cap for the second half of FY 2018 was reached, and is the earliest date the cap for the second half of the fiscal year has been reached since FY 2016. USCIS conducted a lottery on February 21, 2019, to randomly select a sufficient number of petitions to meet the cap. USCIS rejected and returned the petitions and associated filing fees to petitioners that were not selected, as well as all cap-subject petitions received

after February 19, 2019. Given high demand by American businesses for H-2B workers, and the short period of time remaining in the fiscal year for U.S. employers to avoid the economic harms described above, a decision to undertake notice and comment rulemaking would likely delay final action on this matter by weeks or months, and would therefore complicate and likely preclude the Departments from successfully exercising the authority in section 105.

Courts have found "good cause" under the APA when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. Courts have held that an agency may use the good cause exception to address "a serious threat to the financial stability of [a government] benefit program," *Nat'l Fed'n of Fed. Emps. v. Devine*, 671 F.2d 607, 611 (DC Cir. 1982), or to avoid "economic harm and disruption" to a given industry, which would likely result in higher consumer prices, *Am. Fed'n of Gov't Emps. v. Block*, 655 F.2d 1153, 1156 (DC Cir. 1981).

Consistent with the above authorities, the Departments have bypassed notice and comment to prevent the "serious economic harm to the H-2B community," including associated U.S. workers, that could result from ongoing uncertainty over the status of the numerical limitation, *i.e.*, the effective termination of the program through the remainder of FY 2019. See *Bayou Lawn & Landscape Servs. v. Johnson*, 173 F. Supp. 3d 1271, 1285 & n.12 (N.D. Fla. 2016). The Departments note that this action is temporary in nature, *see id.*,<sup>27</sup> and includes appropriate conditions to ensure that it affects only those businesses most in need.

##### 2. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good cause exception to the 30-day effective date requirement is easier to meet than the good cause exception for foregoing notice and comment rulemaking. *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (DC Cir. 1981); *U.S. Steel Corp. v. EPA*, 605 F.2d 283, 289-90 (7th

<sup>27</sup> Because the Departments have issued this rule as a temporary final rule, this rule—with the sole exception of the document retention requirements—will be of no effect after September 30, 2019, even if Congress includes an authority similar to section 105 in a subsequent act of Congress.

Cir. 1979). An agency can show good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.*, 605 F.2d at 290; *United States v. Gavrilovic*, 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above, we also conclude that the Departments have good cause to dispense with the 30-day effective date requirement given that this rule is necessary to prevent U.S. businesses from suffering irreparable harm and therefore causing significant economic disruption.

*B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory

approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs.

The Office of Management and Budget (OMB) has determined that this rule is a “significant regulatory action” although not an economically significant regulatory action. Accordingly, OMB has reviewed this regulation. This final rule is considered an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this temporary rule are discussed in the rule’s economic analysis.

1. Summary

With this final rule, DHS is authorizing up to an additional 30,000

visas for the remainder of FY 2019, pursuant to the FY 2019 Omnibus, to be available to certain H–2B workers for certain U.S. businesses under the H–2B visa classification. By the authority given under the FY 2019 Omnibus, DHS is increasing the H–2B cap for the remainder of FY 2019 for those businesses that: (1) Show that there are an insufficient number of qualified U.S. workers to meet their needs in FY 2019; (2) attest that their businesses are likely to suffer irreparable harm without the ability to employ the H–2B workers that are the subject of their petition; and (3) petition for returning H–2B workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2016, 2017, or 2018. DHS estimates that the total cost of this rule ranges from \$9,360,053 (rounded) to \$11,949,369 (rounded) depending on the combination of petitions filed by each type of filer.<sup>28</sup> Table 1 (below) provides a brief summary of the provision and its impact.

TABLE 1—SUMMARY OF PROVISION AND IMPACT

Current provision	Changes resulting from the proposed provisions	Expected cost of the proposed provision	Expected benefit of the proposed provision
The current statutory cap limits H–2B visa allocations by 66,000 workers a year.	<p>The amended provisions would allow for up to 30,000 additional H–2B visas for the remainder of the fiscal year.</p> <p>Petitioners would also be required to fill out newly created Form ETA–9142–B–CAA–3, Attestation for Employers Seeking to Employ H–2B Non-immigrants Workers Under Section 105 of Div. H of the Consolidated Appropriations Act, 2019.</p>	<ul style="list-style-type: none"> <li>The total estimated cost to file Form I–129 would be \$2,484,797 (rounded) if human resource specialists file, \$3,527,162 (rounded) if in-house lawyers file, and \$4,802,392 (rounded) if outsourced lawyers file.</li> <li>If a Form I–907 is submitted as well, the total estimated cost to file for Form I–907 would be a maximum of \$5,425,961 if human resource specialists file, \$5,542,300 if in-house lawyers file, and \$5,697,682 if outsourced lawyers file.</li> <li>DHS may incur some additional adjudication costs as more applicants may file Form I–129. However, these additional costs are expected to be covered by the fees paid for filing the form.</li> <li>The total estimated cost to petitioners to complete and file Form ETA–9142–B–CAA–3 is \$1,449,295.</li> </ul>	<ul style="list-style-type: none"> <li>Eligible petitioners would be able to hire the temporary workers needed to prevent their businesses from suffering irreparable harm.</li> <li>U.S. employees of these businesses would avoid harm.</li> <li>Serves as initial evidence to DHS that the petitioner meets the irreparable harm and returning workers standards.</li> </ul>

Source: USCIS and DOL analysis.

<sup>28</sup> Calculation: Petitioner costs to file (Form I–129: \$2,484,797 (rounded) to \$4,802,392 (rounded)) + (Form I–907: \$5,425,961 to \$5,697,682) + (Form

ETA–9142–B–CAA–3 \$1,449,295) = \$9,360,053 (rounded) to \$11,949,369 (rounded).

## 2. Background and Purpose of the Rule

The H-2B visa classification program was designed to serve U.S. businesses that are unable to find a sufficient number of qualified U.S. workers to perform nonagricultural work of a temporary or seasonal nature. For an H-2B nonimmigrant worker to be admitted into the United States under this visa classification, the hiring employer is required to: (1) Receive a TLC from DOL and (2) file a Form I-129 with DHS. The temporary nature of the services or labor described on the approved TLC is subject to DHS review during adjudication of Form I-129.<sup>29</sup> Up to 33,000 aliens may be issued H-2B visas or provided H-2B nonimmigrant status in the first half of a fiscal year, and the remaining annual allocation (66,000 is the total annual allocation) will be available for employers seeking to hire H-2B workers during the second half of the fiscal year.<sup>30</sup> Any unused numbers from the first half of the fiscal year will be available for employers seeking to hire H-2B workers during the second half of the fiscal year. However, any unused H-2B numbers from one fiscal year do not carry over into the next and will therefore not be made available.<sup>31</sup>

The H-2B cap for the second half of FY 2019 was reached on February 19, 2019. Normally, once the H-2B cap has been reached, petitioners must wait until the next half of the fiscal year, or the beginning of the next fiscal year, for additional cap-subject visas to become available. However, on February 15, 2019, the President signed the FY 2019 Omnibus that contains a provision (Sec. 105 of Div. H) authorizing the Secretary of Homeland Security, under certain circumstances, to increase the number of H-2B visas available to U.S. employers, notwithstanding the established statutory numerical limitation. After consulting with the Secretary of Labor, the Secretary of Homeland Security has determined it is appropriate to raise the H-2B cap by up to an additional 30,000 visas for the remainder of FY 2019 for certain H-2B workers who would be employed with certain businesses.

## 3. Population

This temporary rule would impact those employers who file Form I-129 on behalf of the nonimmigrant worker(s)

they seek to hire under the H-2B visa program. More specifically, this rule would impact those employers who could establish that their business is likely to suffer irreparable harm because they cannot employ the H-2B returning workers requested on their petition in this fiscal year. Due to the temporary nature of this rule and the limited time left for these additional visas to be available, DHS believes it is more reasonable to assume that eligible petitioners for these additional 30,000 visas will be those employers that have already completed the steps to receive an approved TLC prior to the issuance of this rule.<sup>32</sup>

According to DOL OFLC's certification data for FY 2019, as of March 25, 2019, about 6,183 H-2B certification applications were received with expected work start dates between April 1 and September 30, 2019. DOL OFLC has approved 4,687 certifications for 82,539 H-2B positions and is still reviewing the remaining 863 TLC requests for 13,701 H-2B positions. However, many of these certified worker positions have already been filled under the semi-annual cap of 33,000. Of the 4,687 certified Applications for Temporary Employment Certification, USCIS data shows that 1,774 were already filed with H-2B petitions toward the second semi-annual cap of 33,000 visas. We believe that approximately up to 3,776 Applications for Temporary Employment Certification may be filed under this rule and the FY 2019 supplemental cap. This number is based on the sum of the remaining 2,913 certified H-2B Applications for Temporary Employment Certification (4,687 (total certified) - 1,774 (certified and already submitted under the second semi-annual cap) and 863 Applications for Temporary Employment Certification that are still being processed by DOL, and therefore represents a reasonable estimate of the pool of potential petitions that may request additional H-2B workers under this rule; *i.e.*, under the FY 2019 supplemental cap.<sup>33</sup>

<sup>32</sup> Note that as in the standard H-2B visa issuance process, petitioning employers must still apply for a temporary labor certification and receive approval from DOL before submitting the Form I-129 petition with USCIS. Additionally, petitioning employers can only apply for returning workers who were issued an H-2B visa or were otherwise granted H-2B status in FY 2016, 2017, or 2018.

<sup>33</sup> DHS recognizes that some of the 863 Applications for Temporary Employment Certification that are currently in process may ultimately be denied by DOL, and for those that are not denied, not all will be submitted with H-2B petitions toward the FY 2019 supplemental cap. Similarly, DHS recognizes that not all of the 2,913 approved Applications for Temporary Employment Certification not submitted under the second semi-

## 4. Cost-Benefit Analysis

The costs for this form include filing costs and the opportunity costs of time to complete and file the form. The current filing fee for Form I-129 is \$460 and the estimated time needed to complete and file Form I-129 for H-2B classification is 4.26 hours.<sup>34</sup> The time burden of 4.26 hours for Form I-129 also includes the time to file and retain documents. The application must be filed by a U.S. employer, a U.S. agent, or a foreign employer filing through the U.S. agent. 8 CFR 214.2(h)(2). Due to the expedited nature of this rule, DHS was unable to obtain data on the number of Form I-129 H-2B petitions filed directly by a petitioner and those that are filed by a lawyer on behalf of the petitioner. Therefore, DHS presents a range of estimated costs including if only human resource (HR) specialists file Form I-129 or if only lawyers file Form I-129.<sup>35</sup> Further, DHS presents cost estimates for lawyers filing on behalf of applicants based on whether all Form I-129 applications are filed by in-house lawyers or by outsourced lawyers.<sup>36</sup> DHS presents an estimated range of costs assuming that only HR specialists, in-house lawyers, or outsourced lawyers file these forms, though DHS recognizes that it is likely that filing will be

annual cap of 33,000 will ultimately be submitted with H-2B petitions under the FY 2019 supplemental cap. This is in large part because of the heightened "irreparable harm standard" and the returning workers requirement that employers must meet in order to qualify for additional H-2B visas. However, since DHS cannot more closely estimate the number of petitions that will be submitted under the FY 2019 supplemental cap, DHS believes that 3,776 is reasonable proxy to use as the upper limit of potential petitions for purposes of this analysis.

<sup>34</sup> The public reporting burden for this form is 2.26 hours for Form I-129 and an additional 2 hours for H Classification Supplement. See Form I-129 instructions at <https://www.uscis.gov/i-129> (last visited Apr. 10, 2019).

<sup>35</sup> For the purposes of this analysis, DHS assumes a human resource specialist or some similar occupation completes and files these forms as the employer or petitioner who is requesting the H-2B worker. However, DHS understands that not all entities have human resources departments or occupations and, therefore, recognizes equivalent occupations may prepare these petitions.

<sup>36</sup> For the purposes of this analysis, DHS adopts the terms "in-house" and "outsourced" lawyers as they were used in the DHS, U.S. Immigration and Customs Enforcement (ICE) analysis, "Final Small Entity Impact Analysis: Safe-Harbor Procedures for Employers Who Receive a No-Match Letter" at G-4 (posted Aug. 5, 2008), available at <http://www.regulations.gov/#/documentDetail;D=ICEB-2006-0004-0922>. The DHS ICE analysis highlighted the variability of attorney wages and was based on information received in public comment to that rule. We believe the distinction between the varied wages among lawyers is appropriate for our analysis. Additionally, this methodology was also utilized in the analysis for the temporary final rule increasing the FY 2018 H-2B Cap. See 83 FR 24905 (May 31, 2018).

<sup>29</sup> Revised effective 1/18/2009; 73 FR 78104.

<sup>30</sup> See INA section 214(g)(1)(B), 8 U.S.C. 1184(g)(1)(B), INA section 214(g)(10) and 8 U.S.C. 1184(g)(10).

<sup>31</sup> A TLC approved by the Department of Labor must accompany an H-2B petition. The employment start date stated on the petition generally must match the start date listed on the TLC. See 8 CFR 214.2(h)(6)(iv)(A) and (D).

conducted by a combination of these different types of filers.

To estimate the total opportunity cost of time to petitioners who complete and file Form I-129, DHS uses the mean hourly wage rate of HR specialists of \$31.84 as the base wage rate.<sup>37</sup> If applicants hire an in-house or outsourced lawyer to file Form I-129 on their behalf, DHS uses the mean hourly wage rate of \$68.22 as the base wage rate.<sup>38</sup> Using Bureau of Labor Statistics (BLS) data, DHS calculated a benefits-to-wage multiplier of 1.46 to estimate the full wages to include benefits such as paid leave, insurance, and retirement.<sup>39</sup> DHS multiplied the average hourly U.S. wage rate for HR specialists and for in-house lawyers by the benefits-to-wage multiplier of 1.46 to estimate the full cost of employee wages. The total per hour wage is \$46.49 for an HR specialist and \$99.60 for an in-house lawyer.<sup>40</sup> In addition, DHS recognizes that an entity may not have in-house lawyers and therefore, seek outside counsel to complete and file Form I-129 on behalf of the petitioner. Therefore, DHS presents a second wage rate for lawyers labeled as outsourced lawyers. DHS estimates the total per hour wage is \$170.55 for an outsourced lawyer.<sup>41,42</sup> If

a lawyer submits Form I-129 on behalf of the petitioner, Form G-28 (Notice of Entry of Appearance as Attorney or Accredited Representative), must accompany the Form I-129 submission.<sup>43</sup> DHS estimates the time burden to complete and submit Form G-28 for a lawyer is 30 minutes (0.5 hour). For this analysis, DHS adds the time to complete Form G-28 to the opportunity cost of time to lawyers for filing Form I-129 on behalf of a petitioner. Therefore, the total opportunity cost of time for an HR specialist to complete and file Form I-129 is \$198.05, for an in-house lawyer to complete and file is \$474.10, and for an outsourced lawyer to complete and file is \$811.82.<sup>44</sup> The total cost, including filing fee and opportunity costs of time, per petitioner to file Form I-129 is \$658.05 if HR specialists file, \$934.10 if an in-house lawyer files, and \$1,271.82 if an outsourced lawyer files the form.<sup>45</sup>

#### (a) Cost to Petitioners

As mentioned in Section III.B.3., the population impacted by this rule is the 3,776 petitioners who may apply for up to 30,000 additional H-2B visas for the remainder of FY 2019. Based on the previously presented total filing costs per petitioner, DHS estimates the total cost to file Form I-129 is \$2,484,797 (rounded) if HR specialists file, \$3,527,162 (rounded) if in-house lawyers file, and \$4,802,392 (rounded) if outsourced lawyers file.<sup>46</sup> DHS recognizes that not all Form I-129

petitions are likely to be filed by only one type of filer and cannot predict how many petitions would be filed by each type of filer. Therefore, DHS estimates that the total cost to file Form I-129 could range from \$2,484,797 (rounded) to \$4,802,392 (rounded) depending on the combination of petitions filed by each type of filer.

#### (1) Form I-907

Employers may use *Request for Premium Processing Service* (Form I-907) to request faster processing of their Form I-129 petitions for H-2B visas. The filing fee for Form I-907 is \$1,410 and the time burden for completing the form is 0.58 hours. Using the wage rates established previously, the opportunity cost of time is \$26.96 for an HR specialist to file Form I-907, \$57.77 for an in-house lawyer to file, and \$98.92 for an outsourced lawyer to file.<sup>47</sup> Therefore, the total filing cost to complete and file Form I-907 per petitioner is \$1,436.96 if HR specialists file, \$1,467.77 if in-house lawyers file, and \$1,508.92 if outsourced lawyers file.<sup>48</sup> Due to the expedited nature of this rule, DHS was unable to obtain data on the average percentage of Form I-907 applications that were submitted with Form I-129 H-2B petitions. Table 2 (below) shows the range of percentages of the 3,776 petitioners who may also request their Form I-129 adjudications be premium processed as well as the estimated total cost of filing Form I-907. DHS anticipates that most, if not all, of the additional 3,776 Form I-129 petitions will be requesting premium processing due to the limited time between the publication of this rule and the end of the fiscal year. Further, as shown in table 2, the total estimated cost to complete and file a Form I-907 when submitted with Form I-129 on behalf of an H-2B worker is a maximum of \$5,425,961 if human resources specialists file, \$5,542,300 if in-house lawyers file, and \$5,697,682 if outsourced lawyers file.

<sup>37</sup> U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2017, Human Resources Specialist: <https://www.bls.gov/oes/2017/may/oes131071.htm>.

<sup>38</sup> U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics May 2017, Lawyers: <https://www.bls.gov/oes/2017/may/oes231011.htm>.

<sup>39</sup> The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) / (Wages and Salaries per hour). See Economic News Release, U.S. Department of Labor, Bureau of Labor Statistics, Table 1. Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group (Mar. 2019), available at [https://www.bls.gov/news.release/archives/ecec\\_03192019.pdf](https://www.bls.gov/news.release/archives/ecec_03192019.pdf).

<sup>40</sup> Calculation for the fully loaded hourly total wage of an HR specialist:  $\$31.84 \times 1.46 = \$46.49$ . Calculation for the fully loaded hourly wage of an in-house lawyer:  $\$68.22 \times 1.46 = \$99.60$ .

<sup>41</sup> Calculation: Average hourly wage rate of lawyers  $\times$  Benefits-to-wage multiplier for outsourced lawyer =  $\$68.22 \times 2.5 = \$170.55$ .

<sup>42</sup> The DHS ICE "Safe-Harbor Procedures for Employers Who Receive a No-Match Letter" used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, see page G-4 [Aug. 25, 2008] [<http://www.regulations.gov#!documentDetail;D=ICEB-2006-0004-0922>]. Additionally, this methodology was also utilized in

the analysis for the temporary final rule increasing the FY 2018 H-2B Cap. See 83 FR 24905 (May 31, 2018).

<sup>43</sup> USCIS, *Filing Your Form G-28*, <https://www.uscis.gov/forms/filing-your-form-g-28>.

<sup>44</sup> Calculation if an HR specialist files:  $\$46.49 \times (4.26 \text{ hours}) = \$198.05$ ;

Calculation if an in-house lawyer files:  $\$99.60 \times (4.26 \text{ hours to file Form I-129 H-2B} + 0.5 \text{ hour to file Form G-28}) = \$474.10$ ;

Calculation if an outsourced lawyer files:  $\$170.55 \times (4.26 \text{ hours to file Form I-129 H-2B} + 0.5 \text{ hour to file Form G-28}) = \$811.82$ .

<sup>45</sup> Calculation if an HR specialist files:  $\$198.05 + \$460$  (filing fee) =  $\$658.05$ ;

Calculation if an in-house lawyer files:  $\$474.10 + \$460$  (filing fee) =  $\$934.10$ ;

Calculation if outsourced lawyer files:  $\$811.82 + \$460$  (filing fee) =  $\$1,271.82$ .

<sup>46</sup> Calculation if HR specialist files:  $\$658.05 \times 3,776$  (population applying for H-2B visas) =  $\$2,484,796.80 = \$2,484,797$  (rounded);

Calculation if an in-house lawyer files:  $\$934.1 \times 3,776$  (population applying for H-2B visas) =  $\$3,527,161.60 = \$3,527,162$  (rounded);

Calculation if an outsourced lawyer files:  $\$1,271.82 \times 3,776$  (population applying for H-2B visas) =  $\$4,802,392.32 = \$4,802,392$  (rounded).

<sup>47</sup> Calculation if an HR specialist files:  $\$46.49 \times (0.58 \text{ hours}) = \$26.96$ ;

Calculation if an in-house lawyer files:  $\$99.60 \times (0.58 \text{ hours}) = \$57.77$ ;

Calculation if an outsourced lawyer files:  $\$170.55 \times (0.58 \text{ hours}) = \$98.92$ .

<sup>48</sup> Calculation if an HR specialist files:  $\$26.96 + \$1,410 = \$1,436.96$ ;

Calculation if an in-house lawyer files:  $\$57.77 + \$1,410 = \$1,467.77$ ;

Calculation if outsourced lawyer files:  $\$98.92 + \$1,410 = \$1,508.92$ .

TABLE 2—TOTAL COST OF FILING FORM I-907 UNDER THE H-2B VISA PROGRAM

Percent of filers requesting premium processing <sup>a</sup>	Number of filers requesting premium processing <sup>b</sup>	Total cost to filers <sup>c</sup>		
		Human resources specialist	In-house lawyer	Outsourced lawyer
25 .....	944	\$1,356,490	\$1,385,575	\$1,424,420
50 .....	1,888	2,712,980	2,771,150	2,848,841
75 .....	2,832	4,069,471	4,156,725	4,273,261
90 .....	3,398	4,883,365	4,988,070	5,127,914
95 .....	3,587	5,154,663	5,265,185	5,412,798
100 .....	3,776	5,425,961	5,542,300	5,697,682

**Notes:**

<sup>a</sup> Assumes that all 30,000 additional H-2B visas will be filled by 3,776 petitioners.

<sup>b</sup> Numbers and dollar amounts are rounded to the nearest whole number.

<sup>c</sup> Calculation: (Total cost per filer of Form I-907) × Number of filers who request premium processing = Total cost to filer (rounded to the nearest dollar).

Source: USCIS analysis.

(2) Attestation Requirements

The attestation form includes recruiting requirements, the irreparable harm standard, and document retention obligations. DOL estimates the time burden for completing and signing the form is 0.25 hour and 0.5 hour for notifying third parties and retaining records relating to the returning worker requirements. Using the total per hour wage for an HR specialist (\$46.49), the opportunity cost of time for an HR specialist to complete the attestation form and notifying third parties and retaining records relating to the returning worker requirements, is \$34.87.<sup>49</sup>

Additionally, the form requires that the petitioner assess and document supporting evidence for meeting the irreparable harm standard, and retain those documents and records, which we assume will require the resources of a financial analyst (or another equivalent occupation). Using the same methodology previously described for wages, the total per hour wage for a financial analyst is \$69.79.<sup>50</sup> DOL estimates the time burden for these tasks is at least 4 hours, and 1 hour for gathering and retaining documents and records. Therefore, the total opportunity costs of time for a financial analyst to assess, document, and retain supporting evidence is \$348.95.<sup>51</sup>

<sup>49</sup> Calculation: \$46.49 (average per hour wage for an HR specialist) × 0.75 (time burden for the new attestation form and notifying third parties and retaining records related to the returning worker requirements.) = \$34.87.

<sup>50</sup> Calculation: \$47.80 (average per hour wage for a financial analyst, based on BLS wages) × 1.46 (benefits-to-wage multiplier) = \$69.79. U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics May 2017, *Financial Analysts*: <https://www.bls.gov/oes/2017/may/oes132051.htm>.

<sup>51</sup> Calculation: \$69.79 (fully loaded hourly wage for a financial analyst) × 5 hours (time burden for assessing, documenting and retention of supporting

As discussed previously, we believe that the estimated 3,776 remaining unfilled certifications for the latter half of FY 2019 would include all potential employers who might request to employ H-2B workers under this rule. This number of certifications is a reasonable proxy for the number of employers who may need to review and sign the attestation. Using this estimate for the total number of certifications, DOL estimates that the cost for HR specialists is \$131,660 and for financial analysts is \$1,317,635 (rounded).<sup>52</sup> The total cost is estimated to be \$1,449,295.<sup>53</sup>

(b) Cost to the Federal Government

DHS anticipates some additional costs in adjudicating the additional petitions submitted as a result of the increase in cap limitation for H-2B visas. However, DHS expects these costs to be covered by the fees associated with the forms.

(c) Benefits to Petitioners

The inability to access H-2B workers for these entities may cause their businesses to suffer irreparable harm. Temporarily increasing the number of available H-2B visas for this fiscal year may result in a cost savings, because it will allow some businesses to hire the additional labor resources necessary to avoid such harm. Preventing such harm may ultimately rescue the jobs of any other employees (including U.S. employees) at that establishment. Additionally, returning workers are most likely very familiar with the H-2B

evidence demonstrating the employer is likely to suffer irreparable harm) = \$348.95.

<sup>52</sup> Calculations: Cost for HR Specialists: \$46.49 (fully loaded hourly wage for an HR specialist) × 3,776 certifications × .75 hours = \$131,660. Cost for Financial Analysts: \$69.79 (fully loaded hourly wage for a financial analyst) × 3,776 certifications × 5 hours = \$1,317,635.

<sup>53</sup> Calculation: \$131,660 (total cost for HR specialists) + \$1,317,635 (total cost for financial analysts) = \$1,449,295.

process and requirements and may be positioned to more expeditiously begin work with these employers. In addition, employers may already be familiar with returning workers as they have trained, vetted, and worked with some of these returning workers in past years. As such, limiting the supplemental visas to returning workers would assist employers who are facing irreparable harm.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA. See 5 U.S.C. 603(a), 604(a). This final rule is exempt from notice and comment requirements for the reasons stated above. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this final rule. Accordingly, the Departments are not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This

rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, this rule does not exceed the \$100 million expenditure in any 1 year when adjusted for inflation (\$165 million in 2018 dollars), and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and the Departments have not prepared a statement under the Act.

#### *E. Small Business Regulatory Enforcement Fairness Act of 1996*

This temporary rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996, Public Law 104–121, 804, 110 Stat. 847, 872 (1996), 5 U.S.C. 804(2). This rule has not been found to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

#### *F. Executive Order 13132 (Federalism)*

This rule 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. Therefore, in accordance with section 6 of Executive Order No. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *G. Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order No. 12988, 61 FR 4729 (Feb. 5, 1996).

#### *H. National Environmental Policy Act*

DHS analyzes actions to determine whether the National Environmental Policy Act (NEPA) applies to them and if so what degree of analysis is required. DHS Directive (Dir) 023–01 Rev. 01 establishes the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508. The CEQ regulations allow federal agencies to establish, with CEQ review and

concurrence, categories of actions (“categorical exclusions”) which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. DHS Instruction 023–01 Rev. 01 establishes such Categorical Exclusions that DHS has found to have no such effect. Dir. 023–01 Rev. 01 Appendix A Table 1. For an action to be categorically excluded, DHS Instruction 023–01 Rev. 01 requires the action to satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the Categorical Exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Inst. 023–01 Rev. 01 section V.B (1)–(3).

This rule temporarily amends the regulations implementing the H–2B nonimmigrant visa program to increase the numerical limitation on H–2B nonimmigrant visas for the remainder of FY 2019 based on the Secretary of Homeland Security’s determination, in consultation with the Secretary of Labor, consistent with the FY 2019 Omnibus. Generally, DHS believes that NEPA does not apply to a rule which changes the number of visas which can be issued because any attempt to analyze its impact would be largely, if not completely, speculative. The Departments cannot estimate with reasonable certainty which employers will successfully petition for employees in what locations and numbers. At most, it is reasonably foreseeable that an increase of up to 30,000 visas may be issued for temporary entry into the United States in diverse industries and locations. For purposes of the cost estimates contained in the economic analysis above, DHS bases its calculations on the assumption that all 30,000 will be issued. However, estimating the cost of document filings is qualitatively different from analyzing environmental impacts. Being able to estimate the costs per filing and number of filings at least allows a calculation. Even making that assumption, analyzing the environmental impacts of 30,000 visa recipients among a current U.S. population in excess of 323 million and across a U.S. land mass of 3.794 million square miles, would require a degree of speculation that causes DHS to conclude that NEPA does not apply to this action.

DHS has determined that even if NEPA were to apply to this action, this rule would fit within one categorical exclusion under Environmental Planning Program, DHS Instruction 023–01 Rev. 01, Appendix A, Table 1 and does not individually or cumulatively have a significant effect on the human environment. Specifically, the rule fits within Categorical Exclusion number A3(d) for rules that interpret or amend an existing regulation without changing its environmental effect.

This rule maintains the current human environment by helping to prevent irreparable harm to certain U.S. businesses and to prevent a significant adverse effect on the human environment that would likely result from loss of jobs and income. With the exception of recordkeeping requirements, this rulemaking terminates after September 30, 2019; it is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. No further NEPA analysis is required.

#### *I. Paperwork Reduction Act*

Attestation for Employers Seeking To Employ H–2B Nonimmigrants Workers Under Section 105 of Division H of the Consolidated Appropriations Act, Form ETA–9142–B–CAA–3

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, provides that 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. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB using emergency clearance procedures outlined at 5 CFR 1320.13. That review is ongoing, and DOL will publish a notice announcing the results of that review. The Departments note that while DOL submitted the ICR, both DHS and DOL will use the information.

Moreover, this rule includes a new form, *Attestation for Employers Seeking To Employ H–2B Nonimmigrants Workers Under Section 105 of Division H of the Consolidated Appropriations Act*, Form ETA–9142–B–CAA–3 that petitioners submit to DHS. Petitioners will use this form to make the

irreparable harm and returning worker attestation described above. The petitioner would file the attestation with DHS. In addition, the petitioner may need to advertise the positions. Finally, the petitioner will need to retain documents and records proving compliance with this implementing rule, and must provide the documents and records to DHS and DOL staff in the event of an audit or investigation.

In addition to the request for an emergency approval, DOL is seeking comments on this information collection pursuant to 5 CFR 1320.10. Comments must be received by July 8, 2019. This process of engaging the public and other Federal agencies 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. The PRA provides that 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. See 44 U.S.C. 3501 *et seq.* In addition, notwithstanding any other provisions of law, no person must generally be subject to a penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

In accordance with the PRA, DOL is affording the public with notice and an opportunity to comment on the new information collection, which is necessary to implement the requirements of this temporary rule. The information collection activities covered by this rule are required under Section 105 of Division H of the Consolidated Appropriations Act, which provides that “the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2019 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,” may increase the total number of aliens who may receive an H-2B visa in FY 2019 by not more than the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from the H-2B numerical limitation. As previously discussed in the preamble of this rule, the Secretary of Homeland Security in consultation with the Secretary of Labor

has decided to increase the numerical limitation on H-2B nonimmigrant visas to authorize the issuance of up to, but not more than, an additional 30,000 visas through the end of FY 2019 for certain H-2B workers.

The agencies are 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.

The aforementioned information collection requirements are summarized as follows:

*Agency:* DOL-ETA.

*Type of Information Collection:* New Collection.

*Title of the Collection:* Attestation for Employers Seeking To Employ H-2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act.

*Agency Form Number:* Form ETA-9142-B-CAA-3.

*Affected Public:* Private Sector—businesses or other for-profits.

*Total Estimated Number of Respondents:* 3,776.

*Average Responses per Year per Respondent:* 1.

*Total Estimated Number of Responses:* 3,776.

*Average Time per Response:* 5.75 hours per application.

*Total Estimated Annual Time Burden:* 21,712 hours.

*Total Estimated Other Costs Burden:* \$0.

Application for Premium Processing Service, Form I-907

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, provides that 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. *Application for Premium Processing Service*, Form I-907 has been approved by OMB and assigned OMB control number 1615-0048. DHS is making no changes to the Form I-907 in connection with this temporary rule implementing the time-limited authority pursuant to section 105 of Division H, Consolidated Appropriations Act, 2019, Public Law 116-6 (which expires on October 1, 2019). However, USCIS estimates that this temporary rule may result in approximately 3,776 additional filings of Form I-907 in fiscal year 2019. The current OMB-approved estimate of the number of annual respondents filing a Form I-907 is 319,310. USCIS has determined that the OMB-approved estimate is sufficient to fully encompass the additional respondents who will be filing Form I-907 in connection with this temporary rule, which represents a small fraction of the overall Form I-907 population. Therefore, DHS is not changing the collection instrument or increasing its burden estimates in connection with this temporary rule, and is not publishing a notice under the PRA or making revisions to the currently approved burden for OMB control number 1615-0048.

#### List of Subjects

##### 8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

##### 20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

#### DEPARTMENT OF HOMELAND SECURITY

##### 8 CFR Chapter I

For the reasons discussed in the joint preamble, part 214 of chapter I of title

8 of the Code of Federal Regulations is amended as follows:

**PART 214—NONIMMIGRANT CLASSES**

■ 1. The authority citation for part 214 continues to read as follows:

**Authority:** 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Public Law 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2.

■ 2. Effective May 8, 2019 through September 30, 2019, amend § 214.2 by adding paragraph (h)(6)(x) to read as follows:

**§ 214.2 Special requirements for admission, extension, and maintenance of status.**

\* \* \* \* \*

(h) \* \* \*  
(6) \* \* \*

(x) *Special requirements for additional cap allocations under the Consolidated Appropriations Act, 2019.* (A) Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2019 only, the Secretary has authorized up to an additional 30,000 aliens who may receive H–2B nonimmigrant visas pursuant to section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116–6. Aliens may be eligible to receive H–2B nonimmigrant visas under this paragraph (h)(6)(x) if they are returning workers. The term *returning workers* under this paragraph (h)(6)(x) is defined as those persons who were issued H–2B visas or were otherwise granted H–2B status in Fiscal Years 2016, 2017, or 2018. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under the provision in this paragraph (h)(6)(x).

(B) In order to file a petition with USCIS under this paragraph (h)(6)(x), the petitioner must:

(1) Comply with all other statutory and regulatory requirements for H–2B classification, including but not limited to requirements in this section, under part 103 of this chapter, and under 20 CFR part 655 and 29 CFR part 503; and

(2) Submit to USCIS, at the time the employer files its petition, a U.S. Department of Labor attestation, in compliance with 20 CFR 655.64, evidencing that:

(i) Without the ability to employ all of the H–2B workers requested on the petition filed pursuant to this paragraph

(h)(6)(x), its business is likely to suffer irreparable harm (that is, permanent and severe financial loss);

(ii) All workers requested and/or instructed to apply for a visa have been issued an H–2B visa or otherwise granted H–2B status in Fiscal Years 2016, 2017, or 2018; and

(iii) The employer will provide documentary evidence of this fact to DHS or DOL upon request.

(C) USCIS will reject petitions filed pursuant to this paragraph (h)(6)(x) that are received after the numerical limitation has been reached or after September 16, 2019, whichever is sooner. USCIS will not approve a petition filed pursuant to this paragraph (h)(6)(x) on or after October 1, 2019.

(D) This paragraph (h)(6)(x) expires on October 1, 2019.

(E) The requirement to file an attestation under paragraph (h)(6)(x)(B)(2) of this section is intended to be non-severable from the remainder of this paragraph (h)(6)(x); in the event that paragraph (h)(6)(x)(B)(2) of this section is enjoined or held to be invalid by any court of competent jurisdiction, this paragraph (h)(6)(x) is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this part, as consistent with law.

\* \* \* \* \*

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

*20 CFR Chapter V*

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended as follows:

**PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES**

■ 3. The authority citation for part 655 continues to read as follows:

**Authority:** Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n) and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 4. Effective May 8, 2019 through September 30, 2019, add § 655.64 to read as follows:

**§ 655.64 Special eligibility provisions for Fiscal Year 2019 under the Consolidated Appropriations Act, 2019.**

An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(x) to employ H–2B workers from May 8, 2019 through September 16, 2019, must meet the following requirements:

(a) The employer must attest on Form ETA–9142–B–CAA–3 that without the ability to employ all of the H–2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(x), its business is likely to suffer irreparable harm (that is, permanent and severe financial loss), and that the employer will provide documentary evidence of this fact to DHS or DOL upon request.

(b) The employer must attest on Form ETA–9142–B–CAA–3 that each of the workers requested and/or instructed to apply for a visa, on a petition filed pursuant to 8 CFR 214.2(h)(6)(x), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (Fiscal Years 2016, 2017, or 2018).

(c) An employer that files Form ETA–9142B–CAA–3 and the I–129 petition 45 or more days after the certified start date of work, as shown on its approved *Application for Temporary Employment*, must conduct additional recruitment of U.S. workers as follows:

(1) The employer must place a new job order for the job opportunity with the State Workforce Agency, serving the area of intended employment. The employer must follow all applicable State Workforce Agency instructions for posting job orders and receive applications in all forms allowed by the State Workforce Agency, including online applications (sometimes known as “self-referrals”). The job order must contain the job assurances and contents set forth in § 655.18 for recruitment of

U.S. workers at the place of employment, and remain posted for at least 5 days beginning not later than the next business day after submitting a petition for H-2B worker(s); and

(2) The employer must place one newspaper advertisement using an online or print format on any day of the week meeting the advertising requirements of § 655.41, during the period of time the State Workforce Agency is actively circulating the job order for intrastate clearance; and

(3) The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until 2 business days after the last date on which the job order is posted under paragraph (c)(1) of this section. Consistent with § 655.40(a), applicants can be rejected only for lawful job-related reasons.

(d) This section expires on October 1, 2019.

(e) The requirement to file an attestation under paragraph (a) of this section is intended to be non-severable from the remainder of this section; in the event that paragraph (a) is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this section is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this part, as consistent with law.

■ 5. Effective May 8, 2019 through September 30, 2022, add § 655.67 to read as follows:

**§ 655.67 Special document retention provisions for Fiscal Years 2019 through 2022 under the Consolidated Appropriations Act, 2019.**

(a) An employer who files a petition with USCIS to employ H-2B workers in fiscal year 2019 under authority of the temporary increase in the numerical limitation under section 105 of Division H, Public Law 116-6 must maintain for a period of 3 years from the date of certification, consistent with § 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to regulations governing that temporary increase;

(2) Evidence establishing that employer's business is likely to suffer irreparable harm (that is, permanent and severe financial loss), if it cannot employ H-2B nonimmigrant workers in fiscal year 2019; and

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed, had been issued an H-2B visa or otherwise granted H-2B status during

one of the last three (3) fiscal years (Fiscal Years 2016, 2017 or 2018), as attested to pursuant to 8 CFR 214.2(h)(6)(x).

(4) If applicable, evidence of additional recruitment and a recruitment report that meets the requirements set forth in § 655.48(a)(1), (2), and (7).

DOL or DHS may inspect these documents upon request.

(b) This section expires on October 1, 2022.

**Kevin K. McAleenan,**

*Acting Secretary of Homeland Security.*

**R. Alexander Acosta,**

*Secretary of Labor.*

[FR Doc. 2019-09500 Filed 5-6-19; 11:15 am]

**BILLING CODE 4510-FP-P; 4510-27-P; 9111-97-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2013-0772; Special Conditions No. 25-520A-SC]

#### Special Conditions: Embraer Model EMB-550 Airplanes; Flight Envelope Protection: Normal Load Factor (g) Limiting

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

**ACTION:** Final special conditions.

**SUMMARY:** These amended special conditions are issued for Embraer Model EMB-550 airplanes. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is associated with an electronic flight control system that prevents the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Effective May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:** Joe Jacobsen, Airplane & Flight Crew Interface Section, AIR-671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation

Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206-231-3158; email [joe.jacobsen@faa.gov](mailto:joe.jacobsen@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On August 9, 2016, Embraer applied for a change to Type Certificate No. TC000621B to include additional flexibility to the normal load factor limit on the Embraer Model EMB-550 airplane, by requesting an amendment to the existing Embraer Model EMB-550 Special Conditions No. 25-520-SC as a result of harmonization efforts in the Flight Test Harmonization Working Group (FTHWG). The Embraer Model EMB-550 airplane, currently approved under Type Certificate No. TC000621B, is a twin-engine, transport category airplane with a maximum takeoff weight of 42,857 pounds. The Embraer Model EMB-550 has a maximum seating capacity of 12 passengers.

##### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Embraer must show that the Embraer Model EMB-550 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. TC000621B or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Embraer Model EMB-550 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model EMB-550 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

### Novel or Unusual Design Features

The Embraer Model EMB-550 airplane will incorporate the following novel or unusual design features:

The Embraer Model EMB-550 airplane flight control system design incorporates normal load factor limiting on a full-time basis that will prevent the pilot from inadvertently or intentionally exceeding the positive or negative airplane limit load factor. This feature is considered novel and unusual in that the current regulations do not provide standards for maneuverability and controllability evaluations for such systems.

### Discussion

The normal load factor limit on the Embraer Model EMB-550 airplane is unique in that traditional airplanes with conventional flight control systems (mechanical linkages) are limited in the pitch axis only by the elevator surface area and deflection limit. The elevator control power is normally derived for adequate controllability and the maneuverability at the most critical longitudinal pitching moment. The result is that traditional airplanes have a significant portion of the flight envelope where maneuverability in excess of limit structural design values is possible. The Embraer Model EMB-550 airplane because of the normal load factor limit does not have this excess maneuverability.

Title 14, Code of Federal Regulations (14 CFR) part 25 does not specify requirements for demonstrating maneuver control that impose any handling qualities requirements beyond the design limit structural loads.

Nevertheless, some pilots are accustomed to the availability of this excess maneuver capacity in case of extreme emergency such as upset recoveries or collision avoidance.

As a result of harmonization efforts with other civil aviation authorities through the Flight Test Harmonization Working Group (FTHWG) and Embraer's request to incorporate them into Special Conditions No. 25-520-SC, the FAA is including additional flexibility in maneuverability limits by amending the existing Embraer Model EMB-550 airplane Special Conditions No. 25-520-SC. This additional flexibility allows for reduced maneuverability limits beyond  $V_{mo}/M_{mo}$ . The existing special conditions are otherwise unchanged.

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

### Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25-19-01-SC for the Embraer Model EMB-550 airplane, which was published in the **Federal Register** on April 8, 2019 (84 FR 13838). The FAA received a response from one commenter, while generally supporting the new technology requested a thorough review of the system reliability and failure modes. The comment is already addressed in § 25.1309, Equipment, systems, and installations.

### Applicability

As discussed above, these special conditions are applicable to the Embraer Model EMB-550 airplane. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Embraer Model EMB-550 airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon publication.

### Conclusion

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

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

### Authority Citation

The authority citation for these special conditions is as follows:

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

### The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model EMB-550 airplanes.

1. To meet the intent of adequate maneuverability and controllability required by § 25.143(a), and in addition to the requirements of § 25.143(a) and in

the absence of other limiting factors, the following special conditions are based on § 25.333(b):

a. The positive limiting load factor must not be less than:

(1) 2.5g for the normal state of the electronic flight control system with the high lift devices retracted up to  $V_{mo}/M_{mo}$ . The positive limiting load factor may be gradually reduced down to 2.25g above  $V_{mo}/M_{mo}$ .

(2) 2.0g for the normal state of the electronic flight control system with the high lift devices extended.

b. The negative limiting load factor must be equal to or more negative than:

(1) Minus 1.0g for the normal state of the electronic flight control system with the high lift devices retracted.

(2) 0.0g for the normal state of the electronic flight control system with high lift devices extended.

c. Maximum reachable positive load factor wings level may be limited by the characteristics of the electronic flight control system or flight envelope protections (other than load factor protection) provided that:

(1) The required values are readily achievable in turns, and

(2) Wings level pitch up responsiveness is satisfactory.

d. Maximum achievable negative load factor may be limited by the characteristics of the electronic flight control system or flight envelope protections (other than load factor protection) provided that:

(1) Pitch down responsiveness is satisfactory, and

(2) From level flight, 0g is readily achievable or alternatively, a satisfactory trajectory change is readily achievable at operational speeds. For the FAA to consider a trajectory change as satisfactory, the applicant should propose and justify a pitch rate that provides sufficient maneuvering capability in the most critical scenarios.

e. Compliance demonstration with the above requirements may be performed without ice accretion on the airframe.

f. These special conditions do not impose an upper bound for the normal load factor limit, nor does it require that the limiter exist. If the limit is set at a value beyond the structural design limit maneuvering load factor "n" of §§ 25.333(b), 25.337(b) and 25.337(c), there should be a very obvious positive tactile feel built into the controller so that it serves as a deterrent to inadvertently exceeding the structural limit.

Issued in Des Moines, Washington, on May 2, 2019.

**Victor Wicklund,**

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

[FR Doc. 2019-09398 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA-490]

#### Schedules of Controlled Substances: Placement of Furanyl Fentanyl, 4-Fluoroisobutyryl Fentanyl, Acryl Fentanyl, Tetrahydrofuranyl Fentanyl, and Ocfentanil in Schedule I; Correction

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** Final rule; correcting amendment.

**SUMMARY:** The Drug Enforcement Administration is correcting a final order that appeared in the **Federal Register** on November 29, 2018. The document issued an action maintaining the placement of furanyl fentanyl, 4-fluoroisobutyryl fentanyl, acryl fentanyl, tetrahydrofuranyl fentanyl, and ocfentanil, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, in schedule I of the Controlled Substances Act. A drafting oversight in the amendatory instructions did not correctly update the prefatory language on isomers to reflect the change in the paragraph number for the designation of 3-methylthiofentanyl.

**DATES:** Effective Date: May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:** Lynnette M. Wingert, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**SUPPLEMENTARY INFORMATION:** On May 29, 1987, the Drug Enforcement Administration (DEA) placed six substances, including 3-methylthiofentanyl, into schedule I of the Controlled Substances Act. 52 FR 20070. At that time, the introductory text was revised to clearly indicate that optical and geometric isomers of 3-methylthiofentanyl were controlled. On January 8, 1988, paragraph (b)(34), the listing for 3-methylthiofentanyl, was redesignated to (b)(35), but the introductory text was not revised. 53 FR 500. On May 16, 2016, paragraph

(b)(35), the listing for 3-methylthiofentanyl, was redesignated to (b)(36), but the introductory text was not revised. 81 FR 22023. On June 7, 2017, paragraph (b)(36), the listing for 3-methylthiofentanyl, was redesignated to (b)(37), but the introductory text was not revised. 82 FR 26349. On April 20, 2018, paragraph (b)(37), the listing for 3-methylthiofentanyl, was redesignated to (b)(38), but the introductory text was not revised. 83 FR 17486. On November 29, 2018, paragraph (b)(38), the listing for 3-methylthiofentanyl, was redesignated to (b)(41), the present listing for 3-methylthiofentanyl, and a further error was introduced by modifying the reference to (b)(34) in the preamble to (b)(39), due to a drafting fault. 83 FR 61320.

Previously, the prefatory language has identified 3-methylthiofentanyl by paragraph number. However, the paragraph numbers have changed frequently over time, as new substances are identified and added to the list of schedule I substances in § 1308.11(b). In order to avoid similar oversights or confusion in the future, this correction changes the designation to reference 3-methylthiofentanyl by name rather than by paragraph number.

Because this final rule is limited to a technical correction for accuracy and does not substantively alter any regulation, and is therefore insignificant in nature and impact, and inconsequential to the public, the Agency finds good cause that notice and public procedure are unnecessary to the promulgation of this correction. 5 U.S.C. 553(b)(B). The Agency also finds that this technical correction merely clarifies or explains the existing regulation and is therefore an interpretive rule that does not require notice and comment rulemaking. 5 U.S.C. 553(b)(A); *see also Reno-Sparks Indian Colony v. EPA*, 336 F.3d 899, 909-10 (9th Cir. 2003) (stating that a Technical Correction “was interpretive because it does not change existing substantive law” and thus could be promulgated “by foregoing notice and comment procedures”).

Because, as described above, this final rule is limited to a technical correction for accuracy and does not substantively alter any regulation, and is therefore insignificant in nature and impact, and inconsequential to the public, the Agency finds good cause to make this final rule effective upon the date of publication and to forego thirty days prior notice. *See* 5 U.S.C. 553(d)(3). In addition, pursuant to 5 U.S.C. 553(d)(2), interpretive rules do not require thirty days prior notice before they may become effective. Therefore, because this technical correction is an

interpretive rule, it may be made effective immediately. 5 U.S.C. 553(d)(2).

#### List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, 21 CFR part 1308 is amended as follows:

#### PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. Revise the introductory text of § 1308.11(b) to read as follows:

#### § 1308.11 Schedule I.

\* \* \* \* \*

(b) *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of 3-methylthiofentanyl only, the term isomer includes the optical and geometric isomers):

\* \* \* \* \*

Dated: May 3, 2019.

**Uttam Dhillon,**

*Acting Administrator.*

[FR Doc. 2019-09477 Filed 5-7-19; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1308

[Docket No. DEA-484]

#### Schedules of Controlled Substances: Placement of beta-Hydroxythiofentanyl in Schedule I

**AGENCY:** Drug Enforcement Administration, Department of Justice.  
**ACTION:** Final rule.

**SUMMARY:** With the issuance of this final rule, the Drug Enforcement Administration places *beta*-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropanamide), also known as *N*-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-*N*-phenyl-propanamide, including its isomers, esters, ethers,

salts, and salts of isomers, esters and ethers, in schedule I of the Controlled Substances Act. This rule continues the imposition of the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule I controlled substances on persons who handle (manufacture, distribute, import, export, engage in research, conduct instructional activities or chemical analysis, or possess), or propose to handle *beta*-hydroxythiofentanyl.

**DATES:** This final rule is effective May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Lynnette M. Wingert, Regulatory Drafting and Policy Support Section, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812.

**SUPPLEMENTARY INFORMATION:**

**Legal Authority**

The Controlled Substances Act (CSA) provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (1) on his own motion; (2) at the request of the Secretary of the Department of Health and Human Services (HHS),<sup>1</sup> or (3) on the petition of any interested party. 21 U.S.C. 811(a). This action was initiated by the former Acting Administrator of the Drug Enforcement Administration (DEA) on his own motion and an evaluation of all other relevant data by the DEA, and is supported by a recommendation from the Assistant Secretary for Health of the HHS (Assistant Secretary). This action continues the imposition of the regulatory controls and administrative, civil, and criminal sanctions of schedule I controlled substances on any person who handles or proposes to handle *beta*-hydroxythiofentanyl.

**Background**

On May 12, 2016, the DEA published a final order in the **Federal Register** amending 21 CFR 1308.11(h) to temporarily place *beta*-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropionamide) in schedule I of

the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). 81 FR 29492. That temporary order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA that the temporary scheduling of *beta*-hydroxythiofentanyl was necessary to avoid an imminent hazard to public safety pursuant to 21 U.S.C. 811(h)(1). Section 201(h)(2) of the CSA<sup>2</sup> requires that the temporary control of this substance expire two years from the effective date of the scheduling order, which was May 12, 2018. However, the CSA also provides that during the pendency of proceedings under 21 U.S.C. 811(a)(1) with respect to the substance, the temporary scheduling of that substance may be extended for up to one year. *Id.* Accordingly, on May 10, 2018, the DEA extended the temporary scheduling of *beta*-hydroxythiofentanyl by one year, until May 12, 2019. 83 FR 21834. On May 10, 2018, the DEA published a notice of proposed rulemaking (NPRM) to permanently control *beta*-hydroxythiofentanyl in schedule I of the CSA. 83 FR 21826.

**DEA and HHS Eight Factor Analyses**

On April 27, 2018, the HHS provided the DEA with a scientific and medical evaluation and scheduling recommendation for *beta*-hydroxythiofentanyl entitled “Basis for the recommendation to place  $\beta$ -hydroxythiofentanyl and its isomers, esters, ethers, salts and salts of isomers, esters and ethers into Schedule I of the Controlled Substances Act (CSA).” After considering the eight factors in 21 U.S.C. 811(c), including consideration of the substance’s abuse potential, lack of legitimate medical use in the United States, and lack of accepted safety for use under medical supervision, the Assistant Secretary of the HHS recommended that *beta*-hydroxythiofentanyl be controlled in schedule I of the CSA. In response, the DEA conducted its own eight-factor analysis of *beta*-hydroxythiofentanyl and concluded that this substance warrants control in schedule I of the CSA. Both the DEA and HHS 8-Factor analyses are available in their entirety under the tab “Supporting Documents” of the public docket for this action at <http://www.regulations.gov> under Docket Number “DEA-484.”

**Determination to Schedule *beta*-Hydroxythiofentanyl**

After a review of the available data, including the scientific and medical evaluation and the scheduling

recommendation from the HHS, the former Acting Administrator of the DEA published a NPRM entitled “Schedules of Controlled Substances: Placement of *beta*-Hydroxythiofentanyl into Schedule I,” proposing to control *beta*-hydroxythiofentanyl. 83 FR 21826, May 10, 2018. The NPRM provided an opportunity for interested persons to file a request for hearing in accordance with the DEA regulations on or before June 11, 2018. No requests for such a hearing were received by the DEA. The NPRM also provided an opportunity for interested persons to submit written comments on the proposal up to June 11, 2018. All of the comments received are summarized below, along with the DEA’s response.

**Comments Received**

The DEA received 25 comments on the proposed rule to control *beta*-hydroxythiofentanyl in schedule I of the CSA. Ten commenters were in favor of controlling *beta*-hydroxythiofentanyl as a schedule I controlled substance, and one commenter was in favor of controlling *beta*-hydroxythiofentanyl as a schedule II controlled substance. One commenter supporting the rule submitted responses nine times (generating eight duplicative responses). Six commenters submitted responses that were outside the scope of the action.

**Support of the Proposed Rule**

Ten commenters supported controlling *beta*-hydroxythiofentanyl as a schedule I controlled substance. One commenter urged the DEA to maintain the status of *beta*-hydroxythiofentanyl as a schedule I controlled substance. Another commenter stated it is concerning that the DEA was unable to permanently control *beta*-hydroxythiofentanyl as a schedule I substance within the two year time frame. Three commenters stated that because *beta*-hydroxythiofentanyl has no approved medical use, it should be controlled as a schedule I substance. Specifically, one commenter stated that placing *beta*-hydroxythiofentanyl in a different schedule within the CSA would foster recreational use of this substance. Further, four commenters noted that *beta*-hydroxythiofentanyl and other fentanyl derivatives pose significant health risk to the public. Specifically, one commenter stated that fentanyl and its derivatives have been found in numerous samples of other street drugs such as heroin and cocaine and classifying *beta*-hydroxythiofentanyl as a schedule I controlled substance illustrates the true

<sup>1</sup> As discussed in a memorandum of understanding entered into by the Food and Drug Administration (FDA) and the National Institute on Drug Abuse (NIDA), the FDA acts as the lead agency within the HHS in carrying out the Secretary’s scheduling responsibilities under the CSA, with the concurrence of NIDA. 50 FR 9518, March 8, 1985. The Secretary of the HHS has delegated to the Assistant Secretary for Health of the HHS the authority to make domestic drug scheduling recommendations. 58 FR 35460, July 1, 1993.

<sup>2</sup> 21 U.S.C. 811(h)(2).

stance of the government in protecting the public.

**DEA Response:** The DEA agrees with the comments in support for this rulemaking. With regard to the comment related to the timeliness of permanent control of *beta*-hydroxythiofentanyl by the DEA, the DEA is in compliance with the provisions of a temporary scheduling action. Section 201(h)(2) of the CSA<sup>3</sup> requires that the temporary control of a substance expires two years from the effective date of the scheduling order. The Administrator may, during the pendency of proceedings under subsection 21 U.S.C. 811(a)(1), extend the temporary scheduling for up to one year.

### Comments Suggesting Placement in Schedule II

One commenter stated that *beta*-hydroxythiofentanyl similar to fentanyl should be placed in schedule II of the CSA because it is an analog of fentanyl and has some medical use in the United States.

**DEA Response:** The Assistant Secretary, through a letter dated January 13, 2016, notified the former Acting Administrator of the DEA that *beta*-hydroxythiofentanyl is not the subject of any approved new drug application (NDA) or investigational new drug application (IND). According to HHS, there is no approved drug product containing *beta*-hydroxythiofentanyl. HHS concluded that *beta*-hydroxythiofentanyl lacks accepted medical use in the United States. If a controlled substance has no such currently accepted medical use, it must be placed in schedule I.<sup>4</sup>

### Other Comments

One commenter expressed concerns about the roles of phones in classroom and wants smart phones out of public schools. Another commenter highlighted the gap in medical education system and emphasized the need for physicians to handle difficulties associated with prescription drug abuse. Another commenter stated that words matter when handling complex issues like powerful prescription drugs. Three commenters misinterpreted *beta*-hydroxythiofentanyl as fentanyl and expressed that access to their fentanyl medications, especially the fentanyl

transdermal patch, should not be denied.

**DEA Response:** The comment about phones in classrooms and the comment that words matter when handling powerful prescription drugs are unrelated to this scheduling action.

With regard to the gap in medical education system and the need to educate physicians to tackle prescription drug abuse, the DEA has worked aggressively to improve its communication and cooperation with registrant medical professionals by maintaining an open dialogue with national associations such as the American Medical Association, Federation of State Medical Boards, and other groups to address diversion problems and educate the medical community on improving prescribing practices. In May 2018, the DEA initiated a nationwide program to train individual practitioners through Practitioner Diversion Awareness Conferences (PDACs) throughout the country. In addition to the PDAC training, the DEA has also sent correspondence to 1.3 million prescribers nationwide, alerting them of the Centers for Disease Control and Prevention (CDC) recommendation (part of CDC's Prescribing Guideline for Chronic Pain) for opioid prescribing for acute pain and alerted practitioners to a free training webinar available from CDC. The DEA is also working on similar correspondence to alert these same practitioners about resources available from the Substance Abuse and Mental Health Services Administration (SAMHSA) to locate substance abuse treatment providers in their state.

This rule will not affect patient access to FDA-approved fentanyl medications (such as the fentanyl transdermal patch) because the rule is limited to *beta*-hydroxythiofentanyl, a synthetic opioid with no currently accepted medical use in treatment in the United States.

### Scheduling Conclusion

Based on consideration of all comments, the scientific and medical evaluation and accompanying recommendation of the HHS, and the DEA's consideration of its own eight-factor analysis, the DEA finds that these facts and all other relevant data constitute substantial evidence of potential for abuse of *beta*-hydroxythiofentanyl. As such, the DEA is scheduling *beta*-hydroxythiofentanyl as a controlled substance under the CSA.

### Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as

schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule. 21 U.S.C. 812(b). After consideration of the analysis, recommendation of the Assistant Secretary for HHS, and review of all other available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 811(a) and 21 U.S.C. 812(b)(1), finds that:

1. *beta*-Hydroxythiofentanyl has a high potential for abuse;

2. *beta*-Hydroxythiofentanyl has no currently accepted medical use in treatment in the United States; and

3. There is a lack of accepted safety for use of *beta*-hydroxythiofentanyl under medical supervision.

Based on these findings, the Acting Administrator of the DEA concludes that *beta*-hydroxythiofentanyl (*N*-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-*N*-phenylpropionamide), including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers, warrants control in schedule I of the CSA. 21 U.S.C. 812(b)(1).

### Requirements for Handling *beta*-Hydroxythiofentanyl

Upon the effective date of this final rule, *beta*-hydroxythiofentanyl will continue<sup>5</sup> to be subject to the CSA's schedule I regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, dispensing, importing, exporting, research, and conduct of instructional activities, including the following:

1. **Registration.** Any person who handles (manufactures, distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) *beta*-hydroxythiofentanyl, or who desires to handle *beta*-hydroxythiofentanyl, must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312.

2. **Disposal of stocks.** *beta*-Hydroxythiofentanyl must be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

3. **Security.** *beta*-Hydroxythiofentanyl is subject to schedule I security requirements and must be handled and stored pursuant to 21 U.S.C. 821, 823, and in accordance with 21 CFR 1301.71–1301.93.

<sup>5</sup> *beta*-Hydroxythiofentanyl is currently subject to schedule I controls on a temporary basis, pursuant to 21 U.S.C. 811(h). 81 FR 29492, May 12, 2016.

<sup>3</sup> 21 U.S.C. 811(h)(2).

<sup>4</sup> See Notice of Denial of Petition, 66 FR 20038 (Apr. 18, 2001) ("Congress established only one schedule—schedule I—for drugs of abuse with 'no currently accepted medical use in treatment in the United States' and 'lack of accepted safety for use . . . under medical supervision.'").

4. *Labeling and Packaging.* All labels and labeling for commercial containers of *beta*-hydroxythiofentanyl must comply with 21 U.S.C. 825 and 958(e) and must conform with 21 CFR part 1302.

5. *Quota.* Only registered manufacturers are permitted to manufacture *beta*-hydroxythiofentanyl in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

6. *Inventory.* Every DEA registrant whose registration currently authorizes handling *beta*-hydroxythiofentanyl and who possesses any quantity of *beta*-hydroxythiofentanyl on the effective date of this final rule must maintain an inventory of all stocks of *beta*-hydroxythiofentanyl on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. Any person who becomes registered with the DEA on or after the effective date of this final rule must take an initial inventory of all stocks of *beta*-hydroxythiofentanyl on hand pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including *beta*-hydroxythiofentanyl) on hand every two years pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports with respect to *beta*-hydroxythiofentanyl, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304 and 1312.

8. *Order Forms.* Every DEA registrant who distributes *beta*-hydroxythiofentanyl must comply with the order form requirements, pursuant to 21 U.S.C. 828, and 21 CFR part 1305.

9. *Importation and Exportation.* All importation and exportation of *beta*-hydroxythiofentanyl must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving *beta*-hydroxythiofentanyl not authorized by, or in violation of, the CSA or its implementing regulations is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

## Regulatory Analyses

*Executive Orders 12866, 13563, and 13771, Regulatory Planning and Review, Improving Regulation and Regulatory Review, and Reducing Regulation and Controlling Regulatory Costs*

In accordance with 21 U.S.C. 811(a), this scheduling action is subject to formal rulemaking procedures done “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

This final rule does not meet the definition of an Executive Order 13771 regulatory action. OMB has previously determined that formal rulemaking actions concerning the scheduling of controlled substances, such as this rule, are not significant regulatory actions under Section 3(f) of Executive Order 12866.

*Executive Order 12988, Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

*Executive Order 13132, Federalism*

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

*Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Regulatory Flexibility Act

The Acting Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this final rule and by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. On May 12, 2016, the DEA published a final order to temporarily place *beta*-hydroxythiofentanyl in schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). On May 10, 2018, the DEA published a temporary scheduling order extending the temporary placement of *beta*-hydroxythiofentanyl in schedule I of the CSA for up to one year pursuant to 21 U.S.C. 811(h)(2). Accordingly, all entities that currently handle or plan to handle *beta*-hydroxythiofentanyl have already established and implemented the systems and processes required to handle this substance. There are currently 20 registrations authorized to handle *beta*-hydroxythiofentanyl, as well as a number of registered analytical labs that are authorized to handle schedule I controlled substances generally. These 20 registrations represent 18 entities, of which 14 are small entities. Therefore, the DEA estimates 14 small entities are affected by this rule.

A review of the 20 registrations indicates that all entities that currently handle *beta*-hydroxythiofentanyl also handle other schedule I controlled substances, and have established and implemented (or maintain) the systems and processes required to handle *beta*-hydroxythiofentanyl. Therefore, the DEA anticipates that this rule will impose minimal or no economic impact on any affected entities; and thus, will not have a significant economic impact on any of the 14 affected small entities. Therefore, the DEA has concluded that this rule will not have a significant effect on a substantial number of small entities.

*Unfunded Mandates Reform Act of 1995*

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, the DEA has determined and certifies that this action will not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted for inflation) in any one year . . .” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

*Paperwork Reduction Act of 1995*

This action does not impose a new collection of information under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*Congressional Review Act*

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and

export markets. However, pursuant to the CRA, the DEA has submitted a copy of this final rule to both Houses of Congress and to the Comptroller General.

*Determination To Make Rule Effective Immediately*

The DEA is making the rule effective on the date of publication in the **Federal Register** as allowed under the good cause exception in 5 U.S.C. 553(d)(3). This final rule amends the regulations to permanently control *beta*-hydroxythiofentanyl in schedule I of the CSA. This action continues control of the substance as it is currently controlled until May 12, 2019 by virtue of the temporary scheduling order (83 FR 21834, May 10, 2018). The May 2018 temporary scheduling order extended temporary control of the substance, which was first established in the May 10, 2016, final order. 81 FR 29492. That May 2016 final order was effective on the date of publication, and was based on findings by the Acting Administrator of the DEA that the temporary scheduling of *beta*-hydroxythiofentanyl was necessary to avoid an imminent hazard to the public safety pursuant to 21 U.S.C. 811(h)(1). Therefore, the DEA

believes it is unnecessary and contrary to the public interest to delay the effectiveness of this final rule by 30 days.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR part 1308 as follows:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

■ 1. The authority citation for 21 CFR part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

- 2. In § 1308.11:
  - a. Redesignate paragraphs (b)(16) through (65) as (b)(17) through (66);
  - b. Add new paragraph (b)(16); and
  - c. Remove and reserve paragraph (h)(3).

The addition reads as follows:

**§ 1308.11 Schedule I.**

\* \* \* \* \*  
(b) \* \* \*

(16) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide (Other name: *beta*-Hydroxythiofentanyl) ..... 9836

\* \* \* \* \*

Dated: May 2, 2019.

**Uttam Dhillon,**  
*Acting Administrator.*

[FR Doc. 2019-09479 Filed 5-7-19; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG-2019-0306]

**Special Local Regulation; Regattas and Marine Parades in the COTP Lake Michigan Zone—Harborfest Dragon Boat Race; South Haven, MI**

**AGENCY:** Coast Guard, DHS.  
**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulation on the Black River in South Haven, Michigan for the Harborfest Dragon Boat Race on June 15, 2019. This action is necessary and intended to protect the safety of life and property on navigable waters prior to,

during, and immediately after the boat race. During the enforcement period listed below vessels and persons are prohibited from transiting through, mooring, or anchoring within the special local regulation unless authorized by the Captain of the Port Lake Michigan or a designated representative. The operator of any vessel in the regulated area must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

**DATES:** The regulations in 33 CFR 100.903 will be enforced from 7 a.m. through 6 p.m. on June 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email marine event coordinator MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747-7148, email *D09-SMB-SECLakeMichigan-WWM@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulation in 33 CFR 100.903 from 7 a.m. through 6 p.m. on June 15, 2019. This special local regulation encompasses the waters of the Black River in South Haven, MI within the

following coordinates starting at 42°24'13.6" N, 086°16'41" W; then southeast 42°24'12.6" N, 086°16'40" W; then northeast to 42°24'19.2" N, 086°16'26.5" W; then northwest to 42°24'20.22" N, 086°16'27.4" W; then back to point of origin. (NAD 83). As specified in 33 CFR 100.901, no vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander. This action is being taken to provide for the safety of life and property on navigable waterways prior to, during, and immediately after the boat race.

Pursuant to 33 CFR 100.903, Harborfest Dragon Boat Race; South Haven, MI, entry into, transiting, or anchoring within the special local regulation during an enforcement period is prohibited unless authorized by the Captain of the Port Lake Michigan, or a designated on-scene representative. Those seeking permission to enter the special local regulation may request permission from the Captain of Port Lake Michigan via channel 16, VHF-FM or at (414) 747-7182. If you are the operator of a vessel in the regulated area during the enforcement period you must comply with directions from the Patrol

Commander or any Official Patrol displaying a Coast Guard ensign.

This notice of enforcement is issued under the authority of 33 CFR 100.903 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and Broadcast Notice to Mariners.

Dated: May 2, 2019.

**Thomas J. Stuhldreier,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. 2019-09419 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2019-0313]

#### Special Local Regulation; Recurring Events in Captain of the Port Duluth Zone—Washburn Board Across the Bay

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulation for the Washburn Board Across the Bay event in Washburn, WI from 7:30 a.m. through 12:30 p.m. on July 27, 2019. This action is necessary to protect participants and spectators during the Board Across the Bay event. During the enforcement period, vessels transiting within the regulated area shall travel at a no-wake speed except as may be permitted by the Captain of the Port Duluth or a designated on-scene representative. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

**DATES:** The regulations in 33 CFR 100.169 will be enforced from 7:30 a.m. through 12:30 p.m. on July 27, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email LT Abbie Lyons, Chief of Waterways Management, Coast Guard; telephone (218) 725-3818, email [DuluthWWM@uscg.mil](mailto:DuluthWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulation for the annual Washburn Board Across the Bay event in 33 CFR 100.169 from 7:30 a.m. through 12:30 p.m. on July 27, 2019 on all waters of

the Chequamegon Bay within 100 yards of either side of an imaginary line beginning in Washburn, WI at position 46°36'52" N, 090°54'24" W; thence southwest to position 46°38'44" N, 090°54'50" W; thence southeast to position 46°37'02" N, 090°50'20" W; and ending southwest at position 46°36'12" N, 090°51'51" W.

Vessels transiting within the regulated area shall travel at a no-wake speed except as may be permitted by the Captain of the Port Duluth or a designated on-scene representative. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

This document is issued under authority of 33 CFR 100.169 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners. The Captain of the Port Duluth or their on-scene representative may be contacted via VHF Channel 16 or at (218) 428-9357.

Dated: May 2, 2019.

**E. E. Williams,**

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

[FR Doc. 2019-09410 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2019-0268]

#### Safety Zone; Hemingway Sunset Run & Paddleboard Race, Key West, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the temporary safety zone for the Hemingway Sunset Run & Paddleboard Race, Key West, Florida on July 20, 2019. Our regulation for Recurring Safety Zones in Captain of the Port Key West Zone identifies the regulated area for this event. This action is necessary to ensure the safety of event participants and spectators. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port Key West or a designated representative.

**DATES:** The regulations in 33 CFR 165.786, Table to § 165.786, Item 7.1 will be enforced from 5 p.m. until 6:30 p.m. on July 20, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Gregory Bergstrom, Sector Key West Waterways Management Department, Coast Guard; telephone (305) 292-8772; email [Greg.C.Bergstrom@uscg.mil](mailto:Greg.C.Bergstrom@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zones in 33 CFR 165.786, for the Hemingway Sunset Run and Paddleboard Race regulated area from 5 p.m. to 6:30 p.m. on July 20, 2019. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for recurring marine events within Sector Key West, Table to § 165.786, Item 7.1, specifies the location of the regulated area. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the established regulated areas without approval from the Captain of the Port Key West or designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

The Coast Guard will provide notice of the regulated area by Local Notice to Mariners and Broadcast Notice to Mariners. If the Captain of the Port Key West determines that the regulated area need not be enforced for the full duration stated in this publication, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: May 1, 2019.

**A.A. Chamie,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2019-09409 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2019-0227]

#### Safety Zones; Recurring Events in Captain of the Port Duluth Zone—Bridgifest Regatta Fireworks

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone in 33 CFR 165.943 for the Bridgefest Regatta Fireworks in Houghton, MI from 9:30 p.m. through 11:30 p.m. on June 15, 2019. This action is necessary to protect participants and spectators prior to, during, and immediately after the fireworks display. During the enforcement period listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or a designated on-scene representative.

**DATES:** The regulations in 33 CFR 165.943(a)(1) will be enforced as listed in Table 165.943 from 9:30 p.m. through 11:30 p.m. on June 15, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT Abbie Lyons, Chief of Waterways Management, Coast Guard; telephone (218) 725-3818, email [DuluthWWM@uscg.mil](mailto:DuluthWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Bridgefest Regatta Fireworks safety zone listed as item (1) in Table 165.943 of 33 CFR 165.943 from 9:30 p.m. through 11:30 p.m. on June 15, 2019 on all waters of the Keweenaw Waterway bounded by the arc of a circle with a 100-yard radius from the fireworks launch site with its center in approximate position 47°07'28" N, 088°35'02" W. This action is being taken to provide for the safety of life and property on a navigable waterway during the fireworks display.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or a designated on-scene representative. The Captain of the Port Duluth or an on-scene representative may be contacted via VHF Channel 16 or at (906) 635-3217.

This notice of enforcement is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: May 3, 2019.

**E.E. Williams,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

[FR Doc. 2019-09471 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2019-0310]

#### Safety Zone; Recurring Events in Captain of the Port Duluth Zone—Pointe to La Pointe Swim

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the Pointe to La Pointe Swim event in Bayfield, WI from 5:30 a.m. through 10:30 a.m. on August 03, 2019. This action is necessary to protect participants and spectators during the event. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or a designated on-scene representative.

**DATES:** The regulation listed in 33 CFR 165.943(a)(9) will be enforced as listed in Table 1 to § 33 CFR 165.943 from 5:30 a.m. through 10:30 a.m. on August 3, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call or email LT Abbie Lyons, Chief of Waterways Management, Coast Guard; telephone (218) 725-3818, email [DuluthWWM@uscg.mil](mailto:DuluthWWM@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the special local regulation for the annual Pointe to La Pointe Swim event in 33 CFR 165.943(a)(9) from 5:30 a.m. through 10:30 a.m. on August 3, 2019 on all waters between Bayfield, WI and Madeline Island, WI within an imaginary line created by the following coordinates: 46°48'50.97" N, 090°48'44.28" W, moving southeast to 46°46'44.90" N, 090°47'33.21" W, then moving northeast to 46°46'52.51" N, 090°47'17.14" W, then moving northwest to 46°49'03.23" N, 090°48'25.12" W and finally running back to the starting point.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of

the enforcement of this safety zone via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Duluth may be contacted via Channel 16, VFH-FM or at (218) 428-9357.

Dated: May 2, 2019.

**E.E. Williams,**

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

[FR Doc. 2019-09407 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2019-0132]

RIN 1625-AA00

#### Safety Zones; Annual Safety Zones in the Captain of the Port Detroit Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is updating its recurring safety zones regulations in the Captain of the Port Detroit. This rule updates 51 safety zones locations, dates, and sizes, adds three safety zones, removes six established safety zones, and reformats the regulations into an easier to read table format. These amendments will protect spectators, participants, and vessels from the hazards associated with annual marine events and firework shows, and improve the clarity and readability of the regulation.

**DATES:** This rule is effective June 7, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0132 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Tracy Girard, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9564, email [Tracy.M.Girard@uscg.mil](mailto:Tracy.M.Girard@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

#### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section

U.S.C. United States Code

## II. Background Information and Regulatory History

On March 25, 2019 the Coast Guard published an NPRM in the **Federal Register** (83 FR 52333) entitled “Safety Zones; Annual Safety Zones in the Captain of the Port Detroit Zone.” The NPRM proposed to update the safety zones in § 165.941 to ensure accuracy of times, dates, and dimensions for various triggering and marine events that are expected to be conducted within the Captain of the Port Detroit Zone throughout the year. The purpose of the rulemaking is also to ensure vessels and persons are protected from the specific hazards related to the aforementioned events. These specific hazards include obstructions in the waterway that may cause marine casualties; collisions among vessels maneuvering at a high speed within a channel; the explosive dangers involved in pyrotechnics and hazardous cargo; and flaming/falling debris into the water that may cause injuries.

Included in the NPRM was an invitation to make comments on the proposed regulatory action for updating the safety zones in § 165.941. During the comment period that ended April 25, 2019, the Coast Guard received no comments.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034, 70051, 33 CFR 1.05.1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1. The Captain of the Port Detroit (COTP) has determined these regulations are necessary to ensure vessels and persons are protected from the specific hazards related to the aforementioned events. These specific hazards include obstructions in the waterway that may cause marine casualties; collisions among vessels maneuvering at a high speed within a channel; the explosive dangers involved in pyrotechnics and hazardous cargo; and flaming/falling debris into the water that may cause injuries. Therefore, the COTP is establishing a safety zone around the event locations listed in the table under § 165.941 to help minimize risks to safety of life and property during this event.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published March 25, 2019. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule updates 51 safety zone locations, dates, and sizes, adds three safety zones, removes six established safety zones and reformat the regulations into an easier to read table format. These amendments will protect spectators, participants, and vessels from the hazards associated with annual marine events and firework shows, and improve the clarity and readability of the regulation.

## V. Regulatory Analyses

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

### A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time of day of the safety zones. The safety zones created by this rule will be relatively small and effective during the time to ensure safety of spectator and participants for the listed triggering or marine events. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM about the zone, and the rule will allow vessels to seek permission to enter the zone.

### B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### D. Federalism and Indian Tribal Governments

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

principles and preemption requirements described in Executive Order 13132.

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

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule updates 51 safety zone locations, dates, and sizes, adds three safety zones, removes six established safety zones and reformat the regulations into an easier to read table format. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

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

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165.941 as follows:

#### **PART 165—REGULATION NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Revise § 165.941 to read as follows:

#### **§ 165.941 Safety Zones; Annual Events in the Captain of the Port Detroit Zone.**

(a) Regulations. The following regulations apply to the safety zones listed in Table 1 to § 165.941 of this section, coordinates listed in table are North American Datum of 1983 (NAD 83).

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within any of the safety zones listed in this section is prohibited unless authorized by the Captain of the Port Detroit or a designated representative.

(2) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Detroit or an on-scene representative to obtain permission to do so. The Captain of the Port Detroit or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the

safety zone must comply with all directions given to them by the Captain of the Port Detroit, or an on-scene representative.

(4) The enforcement dates and times for each of the safety zones listed in Table 1 to § 165.941 are subject to change, but the duration of enforcement would remain the same or nearly the same total number of hours as stated in the table. In the event of a change, the Captain of the Port Detroit will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

(b) *Definitions.* The following definitions apply to this section:

(1) Designated or on scene representative means any Coast Guard commissioned, warrant, or petty officers designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into a safety zone, give legally enforceable orders to persons or vessels within a safety zone, and take other actions authorized by the Captain of the Port Detroit.

(2) Public vessel means a vessel that is owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(3) Rain date refers to an alternate date and/or time in which the safety zone would be enforced in the event of inclement weather.

(c) *Suspension of enforcement.* The Captain of the Port Detroit may suspend enforcement of any of these zones earlier than listed in this section. Should the Captain of the Port suspend any of these zones earlier than the listed duration in this section, he or she may make the public aware of this suspension by Broadcast Notice to Mariners and/or on-scene notice by a designated representative.

(d) *Exemption.* Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(e) *Waiver.* For any vessel, the Captain of the Port Detroit or a designated representative may waive any of the requirements of this section upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of safety or security.

TABLE 1 TO § 165.941  
[COTP Zone Detroit]

Event	Sector Detroit safety zones	Date
(1) Shoreline Surrounding Belle Isle Auto Race Detroit, MI.	All waters of the Detroit River near Belle Isle, bounded by a line extending from a point of land on the southern shore of Belle Isle located at the Dossin Museum at position 42°20.06' N, 082°59.14' W, to 50 yards offshore at position 42°20.04' N, 082°59.13' W, and continuing around the downstream (western) end of Belle Isle, maintaining a constant distance of 50 yards from the shoreline to position 42°20.25' N, 083°00.04' W, 50 yards NNW of the Lake Tacoma outlet on the northern side of Belle Isle, before returning to a point on shore and terminating at position 42°20.23' N; 083°00.03' W.	Three consecutive days between May 15 and June 15.
(2) Grosse Point War Memorial Red, White and Blue Gala Fireworks Grosse Pointe Farms, MI.	All waters of Lake St. Clair, within a 200-yard radius of the fireworks launch site located on a barge offshore of Grosse Pointe War Memorial at approximate position 42°23.13' N, 082°53.74' W.	One evening in May.
(3) Bay-Rama Fish Fly Festival Fireworks New Baltimore, MI.	All waters of Anchor Bay, Lake St. Clair, within a 300-yard radius of the fireworks launch site located on a barge offshore of New Baltimore City Park at approximate position 42°40.6' N, 082°43.9' W.	One evening in June.
(4) Sigma Gamma Fireworks Grosse Pointe Farms, MI.	All waters of Lake St. Clair, within a 200-yard radius of the fireworks launch site located on a barge anchored offshore of Ford's Cove at position 42°27.2' N, 082°51.9' W.	One evening between June 15 and July 15.
(5) River Days Airshow Detroit, MI	All waters of the Detroit River between the following two lines extending from 70 feet off the bank to the US/Canadian demarcation line: the first line is drawn directly across the channel at position 42°19.444' N, 083° 03.114' W; the second line, to the north, is drawn directly across the channel at position 42°19.860' N, 083°01.683' W.	Four consecutive days in June or July.
(6) Detroit Fireworks Detroit, MI .....	The following three areas are safety zones: (A) All U.S. waters of the Detroit River a 300-yard radius centered on a point on shore adjacent to West Riverfront Park, Detroit, MI at position 42°19.38' N, 083°03.43' W. (B) The second safety zone area will encompass a portion of the Detroit River bounded on the South by the International Boundary line, on the West by 083°03' W, on the North by the City of Detroit shoreline and on the East by 083°01' W. (C) The third safety zone will encompass a portion of the Detroit River bounded on the South by the International Boundary line, on the West by the Ambassador Bridge, on the North by the City of Detroit shoreline, and on the East by the downstream end of Belle Isle. The Captain of the Port Detroit has determined that vessels below 65 feet in length may enter this zone.	Three consecutive days beginning in June.
(7) Algonac Fireworks Algonac, MI	All waters of the St. Clair River, within a 250-yard radius of the fireworks launch site located on a barge anchored mid-channel, off of Algonac City Park at position 42°37.1' N, 082°31.3' W.	Two consecutive evening between June 15 and July 15.
(8) Bay City Festival, Bay City, MI ..	All waters of the Saginaw River from the Veterans Memorial Bridge, Bay City, MI, located at position 43°35.9' N, 083°53.6' W; south approximately 1100 yards to the River Walk Pier, located at position 43°35.3' N, 083°53.8' W.	Three consecutive evenings between June 15 and July 15.
(9) Caseville Fireworks Caseville, MI.	All waters of Saginaw Bay, within a 200-yard radius of the fireworks launch site located at the end of the Caseville break wall at position 43°56.86' N, 083°17.1' W.	One evening between June 15 and July 15.
(10) Ecorse Fireworks Ecorse, MI ..	All waters of the Detroit River, within a 200-yard radius of the fireworks launch site located at the north end of the Trenton Channel at position 42°14.53' N, 083°08.48' W.	One evening between June 15 and July 15.
(11) Grosse Ile Fireworks Grosse Ile, MI.	All waters of the Detroit River within a 100-yard radius of the fireworks launch site located on the outer pier of the Grosse Ile Yacht Club at position 42°05.39' N, 083°09.06' W.	One evening between June 15 and July 15.
(12) Grosse Pointe Farms Fireworks Grosse Pointe Farms, MI.	All waters of Lake St. Clair, within a 200-yard radius of the fireworks launch site located on shore at the southern point of a private park at position 42°23.84' N, 082°53.25' W.	One evening between June 15 and July 15.
(13) Grosse Point Yacht Club Fireworks Grosse Pointe Shores, MI.	All waters of Lake St. Clair within a 200-yard radius of the fireworks launch site located on a barge offshore of the Grosse Pointe Yacht Club break wall at position 42°26.05' N, 082°52.05' W.	One evening between June 15 and July 15.
(14) Harbor Beach Fireworks Harbor Beach, MI.	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located on shore at the end of the DTE Power Plant at position 43°50.77' N, 082°38.63' W.	One evening in June or July.
(15) Belle Maer Harbor Fireworks Harrison Twp, MI.	All waters of Lake St. Clair within a 300-yard radius of the fireworks launch site located on a barge offshore of the Belle Maer Harbor break wall at position 42°36.55' N, 082°47.55' W.	One evening between June 15 and July 15.
(16) Harrisville Fireworks Harrisville, MI.	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located at the end of the Harrisville Harbor break wall at position 44°39.40' N, 083°17.03' W.	One evening between June 15 and July 15.

TABLE 1 TO § 165.941—Continued  
[COTP Zone Detroit]

Event	Sector Detroit safety zones	Date
(17) Lexington Fireworks Lexington, MI.	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located at the end of the Lexington break wall at position 43°16.00' N, 082°31.36' W.	One evening between June 15 and July 15.
(18) Oscoda Fireworks Oscoda, MI	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located at the end of the Oscoda Beach Park pier at position 44°25.27' N, 083°19.48' W.	One evening between June 15 and July 15.
(19) Port Austin Fireworks Port Austin, MI.	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located on the Port Austin break wall at position 44°03.08' N, 082°59.40' W.	One evening between June 15 and July 15.
(20) Port Sanilac Fireworks Port Sanilac, MI.	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located on the south break wall of Port Sanilac Harbor at position 43°25.84' N, 082°32.15' W.	One evening between June 15 and July 15.
(21) St. Clair Fireworks St. Clair, MI	All waters of the St. Clair River, within a 200-yard radius of the fireworks launch site located on a barge offshore of St. Clair, MI, at position 42°49.38' N, 082°29.0' W.	One evening between June 15 and July 15.
(22) St. Clair Shores Fireworks St. Clair Shores, MI.	All waters of Lake St. Clair within a 250-yard radius of the fireworks launch site located on a barge anchored offshore of Veterans Memorial Park at approximate position 42°31.6' N, 082°52.0' W.	One evening between June 15 and July 15.
(23) Tawas Fireworks Tawas, MI ...	All waters of Lake Huron within a 200-yard radius of the fireworks launch site located on a barge offshore of East Tawas City Park at approximate position 44°16.4' N, 083°29.7' W.	One evening between June 15 and July 15.
(24) Arenac Fireworks, Au Gres, MI	All waters of Saginaw Bay within a 700-foot radius of the fireworks launch site located at position 44°1.4' N, 083°40.4' W. This area is located at the end of the pier near the end of Riverside Drive in Au Gres, MI.	One evening between June 15 and July 15.
(25) Port Huron Fireworks Port Huron, MI.	All waters of the Black River within a 300-yard radius of the fireworks barge located at position 42°58' N, 082°25' W. This position is located 300 yards east of 223 Huron Ave., Black River.	One evening between June 15 and July 15.
(26) Old Club Fireworks, Harsens Island, MI.	All waters of Lake St. Clair within an 850-foot radius of the fireworks launch site located at position 42°32.4' N, 082°40.1' W. This area is located near the southern end of Harsens Island, MI.	One evening between June 15 and July 15.
(27) Port Huron Blue Water Festival Fireworks Port Huron, MI.	All waters of the St. Clair River within a 200-yard radius of the fireworks launch site located on shore at the northern point of Kiefer Park at approximate position 42°58.84' N, 082°25.20' W.	One evening in July.
(28) Detroit Symphony Orchestra Fireworks Grosse Pointe Shores, MI.	All waters of Lake St. Clair, within a 200-yard radius of the fireworks launch site located on a barge anchored offshore of Ford's Cove at position 42°27.25' N, 082°51.95' W.	Two consecutive evenings between July 1 and July 31.
(29) Trenton Fireworks Trenton, MI	All waters of the Detroit River within a 300-yard radius of the fireworks barge located at position 42°09' N, 083°10' W. This position is located 200 yards east of Trenton in the Trenton Channel near Trenton, MI.	One evening between July 1 and July 31.
(30) Venetian Festival Fireworks ....	All waters of Lake St. Clair within a 300-yard radius of the fireworks barge located at position 42°28' N, 082°52' W. This position is located 600 yards off Jefferson Beach Marina, Lake St. Clair.	One evening in August.
(31) Cheeseburger Festival Fireworks, Caseville, MI.	All waters of Lake Huron within a 300-foot radius of the fireworks launch site located at position 43°56.9' N, 083°17.2' W. This area is located near the break wall located at Caseville County Park, Caseville, MI.	One evening in August.
(32) Roostertail Fireworks Detroit, MI.	All waters of the Detroit River within a 200-yard radius of the fireworks launch site located on a barge anchored offshore of Roostertail at position 42°21.27' N, 082°58.36' W.	Three separate evenings between June 15 and September 31.
(33) Marine City Maritime Days Fireworks Marine City, MI.	All waters of the St. Clair River within a 200-yard radius of the fireworks launch site located on a barge offshore of Marine City Park at position 42°43.15' N, 082°29.2' W.	One evening between July 15 and August 15.
(34) Detroit International Jazz Festival Fireworks Detroit, MI.	All waters of the St. Clair River within a 100 yard radius of the fireworks launch site located at position 42°42.9' N, 082°29.1' W. This area is located east of Marine City.	One evening between August 15 and September 15.
Event	Marine Safety Unit Toledo Safety Zones	Date
(35) Washington Township Summerfest Fireworks Toledo, OH.	All waters of the Ottawa River within a 600-foot radius of the fireworks launch site located on the Fred C. Young bridge at position 41°43.29' N, 083°28.47' W.	One evening between June 15 and July 15.
(36) Put-In-Bay 4th of July Fireworks Put-In-Bay, OH.	All waters of Lake Erie within a 1000-foot radius of the fireworks launch site located in Put-In-Bay Harbor at position 41°39.7' N, 082°48.0' W.	One evening between June 15 and July 15.
(37) Toledo Country Club Memorial Celebration and Fireworks Toledo, OH.	All waters of the Maumee River within a 250-yard radius of the fireworks launch site located on shore on the Toledo Country Club's 18th Green at position 41°35.37' N, 083°35.5' W.	One evening between May 15 and May 31.

TABLE 1 TO § 165.941—Continued  
[COTP Zone Detroit]

Event	Sector Detroit safety zones	Date
(38) Freedom Festival Luna Pier, MI.	All waters of Lake Erie within a 300-yard radius of the fireworks launch site located on the Clyde E. Evens Municipal Pier at position 41°48.39' N, 083°26.20' W.	One evening between June 15 and July 15.
(39) Toledo Country Club 4th of July Fireworks Toledo, OH.	All waters of the Maumee River within a 250-yard radius of the fireworks launch site located on shore on the Toledo Country Club's 18th Green at position 41°35.37' N, 083°35.5' W.	One evening between June 15 and July 15.
(40) Lakeside July 4th Fireworks Lakeside, OH.	All waters of Lake Erie within a 200-yard radius of the fireworks launch site located on the Lakeside Association Dock at position 41°32.52' N, 082°45.03' W.	One evening between June 15 and July 15.
(41) Catawba Island Club Fireworks Catawba Island, OH.	All waters of Lake Erie within a 300-yard radius of the fireworks launch site located on the northwest end of the Catawba Cliffs Harbor Light Pier at position 41°34.18' N, 082°51.18' W.	One evening between June 15 and July 15.
(42) Red, White and Blues Bang Fireworks Huron, OH.	All waters of the Huron River within a 300-yard radius of the fireworks launch site located on the Huron Ore Docks at position 41°23.29' N, 082°32.55' W.	One evening in July.
(43) Huron Riverfest Fireworks Huron, OH.	All waters of the Huron River within a 350-yard radius of the fireworks launch site located on the Huron Ore Docks at position 41°23.38' N, 082°32.59' W.	One evening in July.
(44) End of Season Fireworks Lakeside, OH.	All waters of Lake Erie within a 200-yard radius of the fireworks launch site located on the Lakeside Association Dock at position 41°32.52' N, 082°45.03' W.	One evening between September 1 and September 15.
(45) Annual Labor Day Weekend Fireworks Show Catawba Island, OH.	All waters of Lake Erie within a 300-yard radius of the fireworks launch site located on the northwest end of the Catawba Cliffs Harbor Light Pier at position 41°34.3' N, 082°51.3' W.	One evening between September 1 and September 15.
(46) Toledo July 4th Fireworks Toledo, OH.	All waters of the Maumee River within a 300-yard radius of the fireworks launch site located in International Park, Toledo, OH, at position 41°38.44' N, 083°31.49' W.	One evening between June 15 and July 15.
(47) Memorial Day Weekend Fireworks Show Catawba Island, OH.	All waters of Lake Erie within a 300-yard radius of the fireworks launch site located on the northwest end of the Catawba Cliffs Harbor Light Pier at position 41°34.18' N, 082°51.18' W.	One evening between May 15 and May 31.
(48) Put-In-Bay Chamber of Commerce Fireworks Put-In-Bay, OH.	All waters of Lake Erie within a 350-yard radius of the fireworks launch site located in Put-In-Bay Harbor at position 41°39.3' N, 082°49.0' W.	Two separate evenings between June 15 and June 31, and two separate evenings between September 1 and September 15.
(49) Bay Point Fireworks Display Marblehead, OH.	All waters of Lake Erie within a 250-yard radius of the fireworks launch site located on shore in the vicinity of Bay Point, Marblehead, OH, at position 41°30.3' N, 082°43.1' W.	One evening between June 15 and July 15.
(50) LAZ Trommler Fireworks Marblehead, OH.	All waters of the Sandusky Bay within a 500 foot radius of the fireworks launch site located at position 41°30'16" N, 083°48'08" W.	One evening between June 15 and July 15.
(51) Downtown Sandusky Fireworks Sandusky, OH.	All waters of the Sandusky Bay within a 280-foot radius of the fireworks launch site located at position 41°27'32.74" N, 082°42'52.02" W.	One evening between December 31 and January 1.

Dated: May 1, 2019.

Jeffrey W. Novak,

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

[FR Doc. 2019-09408 Filed 5-7-19; 8:45 am]

BILLING CODE 9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2019-0289]

**Safety Zone; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone-St. Joseph Fourth of July Fireworks**

AGENCY: Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone for the St. Joseph Fourth of July Fireworks display on the St. Joseph River and Lake Michigan in St. Joseph, MI from 9 p.m. through 11 p.m. on July 3, 2019. This action is necessary and intended to ensure safety of life on navigable waters immediately prior to, during, and after the fireworks display. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

**DATES:** The regulations in 33 CFR 165.929 will be enforced for safety zone (e)(5), Table 165.929, from 9 p.m. through 11 p.m. on July 3, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email marine event coordinator MST1 Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747-7148, email *D09-SMB-SECLakeMichigan-WWM@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the St. Joseph Fourth of July Fireworks display safety zone listed as item (e)(5) in Table 165.929 of 33 CFR 165.929 from 9 p.m. through 11:00 p.m. on July 3, 2019 on all waters of Lake Michigan and the St. Joseph River within the arc of a circle with a 1,000-foot radius from the fireworks launch site in position 42°06.867' N, 086° 29.463' W. (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless

authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone, and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification for the enforcement of this safety zone via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated representative will inform the public through a Broadcast Notice to Mariners of any changes in the planned schedule. The Captain of the Port Lake Michigan or a representative may be contacted via Channel 16, VHF-FM, or via telephone (414) 747-7182.

Dated: May 2, 2019.

**Thomas J. Stuhlfreyer,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2019-09420 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2019-0220]

RIN 1625-AA00

#### Safety Zone; Lake Michigan, Fox River, De Pere, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for all navigable waters of the Fox River, in the vicinity of Green Bay Metropolitan Sewerage District, De Pere facility and the Northern pier of the Perkofski Boat Launch. This action is needed to protect personnel and vessels from potential hazards created by the outfall of a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Lake Michigan.

**DATES:** This rule is effective from 9 p.m. through 11 p.m. on May 26, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0220 in the "SEARCH" box and click "SEARCH." Click on Open Docket

Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email the marine event coordinator, MSTC Kaleena Carpino, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI; telephone (414) 747-7148, email [DO9-SMB-SECLakeMichigan-WWM@uscg.mil](mailto:DO9-SMB-SECLakeMichigan-WWM@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public, vessels, mariners, and property from the hazards associated with a fireworks display on May 26, 2019.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231); 33 CFR 1.05-1, 160.5; Department of Homeland Security Delegation No. 0170.1.

A fireworks display will take place on Fox River in De Pere, WI on May 26, 2019 from 9 p.m. through 11 p.m. The Captain of the Port Lake Michigan has determined that this fireworks display will pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, falling and burning debris, and collisions among spectator vessels.

##### IV. Discussion of the Rule

With the aforementioned hazards in mind, the Captain of the Port Lake Michigan has determined that this temporary safety zone is necessary to protect persons and vessels during the fireworks display in the waters of the Fox River, in De Pere, WI. This zone is effective and will be enforced from 9 p.m. through 11 p.m. on May 26, 2019. The safety zone will be enforced for all navigable waters of the Fox River, in the vicinity of Green Bay Metropolitan Sewerage District, De Pere facility and the Northern pier of the Perkofski Boat Launch within an area bounded by the following coordinates; at 44°27'43.26" N 88°03'34.86" W (NAD 83) continuing east across the Fox River to 44°27'41.18" N 88°03'24.32" W (NAD 83) then south along the riverbank to 44°27'18.10" N 88°03'40.79" W (NAD 83) then west across the Fox River to 44°27'32.12" N 88°04'06.21" W (NAD 83) then north returning to the point of origin.

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

##### V. Regulatory Analyses

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

###### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a

“significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. The safety zone created by this rule will be relatively small and enforced for only two hours. Under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

#### B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman

and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

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

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

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this rule under Department of Homeland Security

Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 2 hours that will prohibit entry within the established safety zone for the firework display. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**.

#### G. Protest Activities

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

#### List of Subjects in 33 CFR Part 165

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

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

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

- 2. Add § 165.T09–0220 to read as follows:

#### § 165.T09–0220 Safety Zone; Lake Michigan, Fox River, De Pere, WI.

(a) *Location.* All navigable waters of the Fox River, in the vicinity of Green Bay Metropolitan Sewerage District, De Pere facility and the Northern pier of the Perkofski Boat Launch within an area bounded by the following coordinates; at 44°27′43.26″ N 88°03′34.86″ W (NAD 83) continuing east across the Fox River to 44°27′41.18″ N 88°03′24.32″ W (NAD 83) then south along the riverbank to 44°27′18.10″ N 88°03′40.79″ W (NAD 83) then west across the Fox River to 44°27′32.12″ N 88°04′06.21″ W (NAD

83) then north returning to the point of origin.

(b) *Effective and enforcement period.* This section is effective and will be enforced from 9 p.m. through 11 p.m. on May 26, 2019.

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

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

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

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

Dated: May 2, 2019.

**Thomas J. Stuhlreyer,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2019-09417 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2017-0532; FRL-9990-60]

### Cyflumetofen; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of the insecticide cyflumetofen in or on tea, dried. OAT Agrico. Ltd., Tokyo, Japan c/o Landis International, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective May 8, 2019. Objections and requests for hearings must be received on or before

July 8, 2019 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0532, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Goodis, P.E., Director, Registration Division (750P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfrNotices@epa.gov](mailto:RDfrNotices@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA’s tolerance regulations at 40 CFR part 180 through the Government Printing Office’s e-CFR site at [http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-id?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2017-0532 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before July 8, 2019. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2017-0532, by one of the following methods:

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

##### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of December 15, 2017 (82 FR 59604) (FRL-9970-50), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 7E8609) by OAT Agrico. Ltd., Tokyo, Japan, c/o Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta,

Georgia 31603–5126. The petition requested that 40 CFR 180.677 be amended by establishing tolerances for residues of the insecticide cyflumetofen, (2-methoxyethyl  $\alpha$ -cyano- $\alpha$ -[4-(1,1-dimethylethyl)phenyl]- $\beta$ -oxo-2-(trifluoromethyl)benzenepropanoate), in or on tea at 40 parts per million (ppm). That document referenced a summary of the petition prepared by OAT Agrio, Ltd. c/o Landis International, Inc., the registrant, which is available in the docket, <http://www.regulations.gov>. These tolerances were requested to cover residues of cyflumetofen in or on tea resulting from use of this pesticide on tea outside the United States. There is no current U.S. registration for use of cyflumetofen on tea. Four comments were submitted to the docket concerning issues outside the scope of this rulemaking.

Based upon review of the data supporting the referenced petition, EPA is establishing a tolerance for residues of cyflumetofen on tea, dried.

### III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is “safe.” Section 408(b)(2)(A)(ii) of FFDCA defines “safe” to mean that “there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .”

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

EPA’s assessment of exposures and risks associated with cyflumetofen follows.

#### A. Toxicological Profile

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

Cyflumetofen has a low acute toxicity via the acute oral, dermal, and inhalation routes of exposure. It is minimally irritating to the eyes but not to the skin. Cyflumetofen is a skin sensitizer. The major target organ in rats, mice, and dogs following short- and long-term oral administration of cyflumetofen is the adrenal glands characterized by increased organ weight and histopathology (vacuolation and hypertrophy of the adrenal cortical cells).

There is no evidence of increased qualitative or quantitative susceptibility in the rat 2-generation reproduction study; however, the rat and rabbit developmental studies indicate susceptibility in the pups. There is evidence of increased quantitative susceptibility in the rabbit developmental toxicity study, since developmental effects at the limit dose were observed where no maternal toxicity was present. There is evidence of increased qualitative susceptibility in the rat developmental toxicity study as developmental effects were seen at the same dose that caused an increase in adrenal weights and organ-to-body weight ratio in the maternal animals.

There is no evidence of neurotoxicity in any of the submitted studies for cyflumetofen.

Cyflumetofen has been classified as having “Suggestive Evidence of Carcinogenic Potential” in accordance with the EPA’s Final Guidelines for Carcinogen Risk Assessment (March 2005). This classification is based on the presence of a single tumor type (thyroid c-cell) in one sex (male) and one species (rat), and the lack of concern for mutagenicity. When there is suggestive evidence of carcinogenicity, the Agency does not attempt a dose-response assessment as the nature of the data generally would not support one. Therefore, the Agency has determined that quantification of risk using a non-linear approach (*i.e.*, the chronic

reference dose) will adequately protect for all chronic toxicity, including carcinogenicity, likely to result from exposure to cyflumetofen.

More detailed information on the studies received and the nature of the adverse effects caused by cyflumetofen as well as the NOAEL and the LOAEL from the toxicological studies can be found in the document entitled, “Cyflumetofen. Human Health Risk Assessment to Support New Uses on Imported Tea,” dated March 4, 2019, by going to <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2017–0532. Double-click on the document to view the referenced information.

#### B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide’s toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for cyflumetofen used for human risk assessment is shown in the Table of this unit.

TABLE — SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CYFLUMETOFEN FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute Dietary (All Populations) .....	An acute RfD has not been established for either the general U.S. population or for females 13–49 years of age since there were no appropriate studies that demonstrated evidence of toxicity attributable to a single dose for these populations.		
Chronic dietary (All Populations) .....	NOAEL = 16.5 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Chronic RfD = 0.17 mg/kg/day. cPAD = 0.17 mg/kg/day	Three co-critical studies: 90-Day Feeding Study in Rats. LOAEL = 1,000 ppm (54.5/62.8 mg/kg/day in males/females) based on hematology and organ weight changes in the liver, adrenal, kidney and ovaries; and histopathology effects in the adrenals and the ovaries. NOAEL = 300 ppm (16.5/19 mg/kg/day in males/females). Chronic Toxicity/Carcinogenicity Study in Rats. LOAEL = 1,500 ppm (49.5/61.9 mg/kg/day in males/females) based on increased adrenal weights and histopathology. NOAEL = 500 ppm (16.5/20.3 mg/kg/day in males/females). Two-Generation Reproduction Study in Rats. Parental: LOAEL = 500 ppm (30.6/46.6 mg/kg/day in males/females) based on increased organ weight and histopathology in adrenals. NOAEL = 150 ppm (9.2/13.8 mg/kg/day in males/females).
Adult and Incidental Oral (Short- and Intermediate-Term).	NOAEL = 16.5 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	LOC for MOE = <100 ...	Same as chronic dietary endpoint.
Dermal (Short- and Intermediate-Term).	No dermal hazard was identified. No appropriate endpoint was selected for risk assessment.		
Inhalation (Short- and Intermediate-Term).	NOAEL = 16.5 mg/kg/day. UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Occupational and Residential LOC for MOE = <100.	Same as chronic dietary endpoint.
Cancer (Oral, Dermal, and Inhalation)	Classification: “Suggestive Evidence of Carcinogenic Potential.”		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

More detailed information on the toxicological endpoints for cyflumetofen can be found in the document entitled, “Cyflumetofen. Human Health Risk Assessment to Support New Uses on Imported Tea,” dated March 4, 2019, by going to <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2017–0532. Double-click on the document to view the referenced information.

### C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to cyflumetofen, EPA considered exposure under the petitioned-for tolerances as well as all existing cyflumetofen tolerances in 40 CFR 180.677. EPA assessed dietary exposures from cyflumetofen in food as follows:

i. *Acute exposure.* No acute dietary exposure and risk analysis was performed since there were no appropriate studies identified in the

toxicology database that demonstrated evidence of toxicity attributable to a single dose.

ii. *Chronic exposure.* An unrefined chronic dietary analysis was conducted that was based on tolerance-level residues, 100% crop treated (%CT) assumptions, and empirical processing estimates when available or DEEM™ processing factors. Using assumptions considered to be highly protective, the estimated dietary risks ranged from <1% of the cPAD for the general U.S. population to 2.4% of the cPAD for the highest exposed population subgroup of children 1–2 years old. The Agency’s LOC is <100% cPAD.

iii. *Cancer.* As explained in unit III.A., quantification of risk using a non-linear approach (i.e., a cPAD) will adequately account for all chronic toxicity, including carcinogenicity, that could result from exposure to cyflumetofen.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue information in the dietary assessment for cyflumetofen. Tolerance-level residues

and/or 100% CT were assumed for all food commodities.

More detailed information on the acute and chronic dietary (food only) exposure and risk assessment for cyflumetofen can be found in the document entitled, “Cyflumetofen. Human Health Risk Assessment to Support New Uses on Imported Tea,” dated March 4, 2019, by going to <http://www.regulations.gov>. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2017–0532. Double-click on the document to view the referenced information.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for cyflumetofen in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of cyflumetofen. Further information regarding EPA drinking water models used in pesticide exposure assessment

can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

The estimated drinking water concentrations (EDWCs) previously used in the dietary risk assessment were incorporated directly into this dietary assessment. The Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) simulations of a NY grapes scenario produced the highest surface-water EDWCs (0.33 ppb for chronic dietary exposure) and an updated EDWC was not required for this assessment since the proposed use on imported tea will not impact the previously provided estimates.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.33 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The registered uses of cyflumetofen on ornamentals may result in adult residential handler and post-application exposure. This exposure is expected to be only short-term in duration (i.e., 1 to 30 days) as intermediate- or long-term exposures are not likely based on the intermittent nature of applications by homeowners. Since no dermal hazard was identified for cyflumetofen in the toxicological database, only inhalation exposure assessments were conducted. The resulting inhalation margins of exposure (MOEs) for all scenarios are not of concern since they are above the level of concern (LOC) of 100 (MOEs  $\geq 100$ ). Based on the registered use pattern, exposure to children in residential settings is not anticipated. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular pesticide’s residues and “other substances that have a common mechanism of toxicity.”

EPA has not found cyflumetofen to share a common mechanism of toxicity with any other substances, and cyflumetofen does not appear to

produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that cyflumetofen does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www.epa.gov/pesticides/cumulative>.

#### D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act Safety Factor (FQPA SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There is no evidence of increased qualitative or quantitative susceptibility in the rat 2-generation reproduction study; however, the rat and rabbit developmental studies indicate susceptibility in the pups. There is evidence of increased quantitative susceptibility in the rabbit developmental toxicity study, since developmental effects (changes in ossification, paw flexion, and decreased fetal body weights) at the limit dose were observed where no maternal toxicity was present. There is evidence of increased qualitative susceptibility in the rat developmental toxicity study as developmental effects (increased incidence of incompletely ossified sternal centra) were seen at the same dose that caused an increase in adrenal weights and organ-to-body weight ratio in the maternal animals. Notwithstanding, the degree of concern for these effects in infants and children is low because the rat and rabbit developmental effects have clearly defined NOAEL/LOAELs and the dose selected for chronic risk assessment is protective of these effects. Therefore, the PODs based on adrenal effects in rat are health protective of all life stages.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be

adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

- i. The toxicity database for cyflumetofen is complete and adequate to characterize potential pre- and/or post-natal risk for infants and children.
- ii. There are acute and subchronic neurotoxicity studies available. There is no indication that cyflumetofen is a neurotoxic chemical in any of the submitted studies for cyflumetofen, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.
- iii. While there is evidence of increased susceptibility in the rabbit and rat developmental studies, these studies have clearly defined NOAEL/LOAELs based on the explanation in Unit III.D.2. above.
- iv. There are no residual uncertainties identified in the exposure database. Since the dietary and residential exposure estimates were based on conservative assumptions, EPA is confident that this assessment does not underestimate dietary (food and water) or residential exposure.

#### E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate dietary risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No acute dietary exposure and risk analysis was performed since there were no appropriate studies identified in the toxicology database that demonstrated evidence of toxicity attributable to a single dose.

2. *Chronic risk.* Using the exposure assumptions described in the unit for chronic exposure, EPA has concluded that chronic exposure to cyflumetofen from food and water will utilize 2.4% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of cyflumetofen is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Cyflumetofen is currently registered for use on ornamentals that result in residential handler exposure. Residential handler exposure is expected to be short-term in duration as intermediate- or long-term exposures are not likely because of the intermittent nature of applications by homeowners, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to cyflumetofen.

Since no dermal hazard was identified for cyflumetofen in the toxicological database, only inhalation exposure assessments were conducted for residential handlers. The most conservative residential exposure scenario was chosen for the adult population which reflects inhalation exposure from mixing/loading/applying the liquid cyflumetofen formulation with a backpack sprayer. For background dietary exposure, the adult sub-population with the highest exposure (adults 50–99) was chosen since this is protective for all other adult sub-populations. There are no residential exposures expected for children; therefore, a short-term aggregate risk assessment for children is equal to the chronic food and drinking water exposure and risk estimates and is not of concern. Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs above the LOC of 100 for all scenarios assessed and are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, cyflumetofen is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the

chronic dietary risk assessment for evaluating intermediate-term risk for cyflumetofen.

5. *Aggregate cancer risk for U.S. population.* As discussed in Unit III.A., EPA concluded that the nonlinear approach for assessing potential cancer risk from exposure to cyflumetofen is appropriate. As noted in this Unit, the chronic risk aggregate exposure to cyflumetofen is below the Agency's level of concern; therefore, the Agency concludes that there is not a cancer risk of concern from exposure to cyflumetofen.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to cyflumetofen residues.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

An adequate enforcement methodology is available to enforce the HED-recommended tolerances for cyflumetofen in plant commodities. The high-performance liquid chromatography with tandem mass spectrometry (HPLC–MS/MS) method has been adequately validated, has undergone a successful ILV (independent laboratory validation), is considered adequately radio-validated and has been reviewed by the Agency for appropriateness as an enforcement method. The method limit of detection (LOD) for residues of cyflumetofen in tea is 0.01 ppm. Cyflumetofen has also been subjected to analysis by the Food and Drug Administration (FDA) multi-residue method (MRM) protocols. Cyflumetofen is not adequately recovered through any of the FDA multi-residue protocols.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture

Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has not established maximum residue limits (MRLs) for residues of cyflumetofen in tea commodities; therefore, there are no harmonization issues.

##### C. Revisions to Petitioned-For Tolerances

To conform with to the Agency's preferred commodity vocabulary, EPA is establishing the tolerance for tea on "tea, dried", which will cover residues on all tea commodities.

#### V. Conclusion

Therefore, a tolerance is established for residues of the insecticide cyflumetofen, (2-methoxyethyl  $\alpha$ -cyano- $\alpha$ -[4-(1,1-dimethylethyl)phenyl]- $\beta$ -oxo-2-(trifluoromethyl)benzenepropanoate), in or on tea at 40 ppm.

#### VI. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), nor is considered a regulatory action under Executive Order 13771, entitled "Reducing Regulations and Controlling Regulatory Costs" (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCa section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCa section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR

67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 26, 2019.

**Donna Davis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.677, add alphabetically the commodity “tea, dried” to the table in paragraph (a) to read as follows:

**§ 180.677 Cyflumetofen; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
* * * * *	*
Tea, dried <sup>1</sup> .....	40
* * * * *	*

<sup>1</sup> There are no U.S. registrations for this commodity as of May 8, 2019.

\* \* \* \* \*

[FR Doc. 2019-09377 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

# Proposed Rules

Federal Register

Vol. 84, No. 89

Wednesday, May 8, 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.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 930

[Doc. No. AMS–SC–18–0083; SC19–930–1 PR]

#### Tart Cherries Grown in the States of Michigan, et al.; Free and Restricted Percentages for the 2018–19 Crop Year and Revision of Grower Diversion Requirements for Tart Cherries

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Cherry Industry Administrative Board (Board) to establish free and restricted percentages for the 2018–19 crop year under the Marketing Order for tart cherries grown in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. This action would establish the proportion of tart cherries from the 2018–19 crop which may be handled in commercial outlets. This action would also revise the regulations regarding grower diversion. This action should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns.

**DATES:** Comments must be received by June 7, 2019.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business

hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this proposal will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:**

Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: [Jennie.Varela@usda.gov](mailto:Jennie.Varela@usda.gov) or [Christian.Nissen@usda.gov](mailto:Christian.Nissen@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: [Richard.Lower@ams.usda.gov](mailto:Richard.Lower@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. Part 930 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.” The Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory action that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in

Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled ‘Reducing Regulation and Controlling Regulatory Costs’ ” (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order provisions now in effect, free and restricted percentages may be established for tart cherries handled during the crop year. This proposed rule would establish free and restricted percentages for tart cherries for the 2018–19 crop year, beginning July 1, 2018, through June 30, 2019.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA’s ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on the establishment of free and restricted percentages for the 2018–19 crop year. This proposal would establish the proportion of tart cherries from the 2018–19 crop which may be handled in commercial outlets at 73 percent free and 27 percent restricted. This action would also revise the regulations regarding grower diversion to codify the Board’s definition of marketable fruit. The Secretary of Agriculture (Secretary) has determined that designating free and restricted percentages of tart cherries for the 2018–2019 crop year would effectuate the declared policy of the Act to stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. These recommendations were made by the Board at meetings on September 13, 2018, and October 23, 2018.

Section 930.51(a) provides the Secretary authority to regulate volume by designating free and restricted percentages for any tart cherries acquired by handlers in a given crop year. Section 930.50 prescribes procedures for computing an optimum supply based on sales history and for calculating these free and restricted percentages. Free percentage volume may be shipped to any market, while restricted percentage volume must be held by handlers in a primary or secondary reserve, or be diverted or used for exempt purposes as prescribed in §§ 930.159 and 930.162. Exempt purposes include, in part, the development of new products, sales into new markets, the development of export markets, and charitable contributions. Sections 930.55 through 930.57 prescribe procedures for inventory reserve. For cherries held in reserve, handlers would be responsible for storage and would retain title of the tart cherries.

Under § 930.52, only districts with an annual average production over the prior three years of at least six million pounds are subject to regulation, and any district producing a crop that is less than 50 percent of its annual average of the previous five years is exempt. The regulated districts for the 2018–19 crop year would be: District 1—Northern Michigan; District 2—Central Michigan; District 3—Southern Michigan; District 4—New York; District 7—Utah; District 8—Washington; and District 9—Wisconsin. Districts 5 and 6 (Oregon and Pennsylvania, respectively) would not be regulated for the 2018–19 season.

Section 930.58 of the Order provides authority for voluntary grower diversion. When volume regulation is in effect, growers can divert all or a portion of their cherries which otherwise, upon delivery to a handler, would be subject to regulation. This section also authorizes the Board, with the approval of the Secretary, to establish terms and conditions for grower diversion. Section 930.158 prescribes the rules and regulations for grower diversion, including a requirement that diverted cherries be marketable.

Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. Conversely, annual tart cherry production can vary greatly. In addition, tart cherries are processed and can be stored and carried over from crop year to crop year, further impacting supply. As a result, supply and demand for tart cherries are rarely in balance.

Because demand for tart cherries is inelastic, total sales volume is not very responsive to changes in price.

However, prices are very sensitive to changes in supply. As such, an oversupply of cherries would have a sharp negative effect on prices, driving down grower returns. Aware of this economic relationship, the Board focuses on using the volume control provisions in the Order to balance supply and demand to stabilize industry returns.

Pursuant to § 930.50, the Board meets on or about July 1 to review sales data, inventory data, current crop forecasts, and market conditions for the upcoming season and, if necessary, to recommend preliminary free and restricted percentages if anticipated supply would exceed demand. After harvest is complete, but no later than September 15, the Board meets again to update its calculations using actual production data, consider any necessary adjustments to the preliminary percentages, and determine if final free and restricted percentages should be recommended to the Secretary.

The Board uses sales history, inventory, and production data to determine whether there is a surplus and, if so, how much volume should be restricted to maintain optimum supply. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year. Optimum supply is defined as the average free sales of the prior three years plus desirable carry-out inventory. Desirable carry-out is the amount of fruit needed by the industry to be carried into the succeeding crop year to meet market demand until the new crop is available. Desirable carry-out is set by the Board after considering market circumstances and needs. Section 930.151(b) specifies that desirable carry-out can range from zero to a maximum of 100 million pounds.

In addition, USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders>) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is codified in § 930.50(g), which specifies that in years when restricted percentages are established, the Board shall make available tonnage equivalent to an additional 10 percent of the average sales of the prior three years for market expansion (market growth factor).

After the Board determines optimum supply, desirable carry-out, and market growth factor, it must examine the current year's available volume to

determine whether there is an oversupply situation. Available volume includes carry-in inventory (any inventory available at the beginning of the season) along with that season's production. If production is greater than the optimum supply minus carry-in, the difference is considered surplus. This surplus tonnage is divided by the sum of production in the regulated districts to reach a restricted percentage. This percentage must be held in reserve or used for approved diversion activities, such as exports.

The Board met on July 6, 2018, and computed an optimum supply of 303 million pounds for the 2018–19 crop year using the average of free sales for the three previous seasons and desirable carry-out. To determine the carry-out figure, the Board discussed and considered a range of alternatives. One member suggested a carry-out value of 100 million pounds to maximize the amount of fruit on the market and to compete with imports. Another member indicated both free and restricted product could be used to compete with imports and proposed a 50 million pound carry-out. Another attendee noted excessive carryout puts downward pressure on prices. After the consideration of the alternatives, the Board determined a carry-out of 80 million pounds would supply the industry's needs at the beginning of the next season.

The Board subtracted the estimated carry-in of 125.1 million pounds from the optimum supply to calculate the production quantity needed from the 2018–19 crop to meet optimum supply. This number, 177.9 million pounds, was subtracted from the Board's estimated 2018–19 total production (from regulated and unregulated districts) of 344.5 million pounds to calculate a surplus of 166.6 million pounds of tart cherries. The Board also complied with the market growth factor requirement by removing 22.3 million pounds (average sales for prior three years of 223 million times 10 percent) from the surplus. The adjusted surplus of 144.3 million pounds was then divided by the expected production in the regulated districts (338.5 million pounds) to reach a preliminary restricted percentage of 43 percent for the 2018–19 crop year.

The Board then discussed whether this calculation would provide sufficient supply to grow sales and fulfil orders that have not yet shipped. Some members and attendees expressed concern that some existing inventory is old enough that it is difficult to sell and thus more of the current season's fruit should be made available. Some also reported there may be poor fruit yield in

Michigan, which would require more tonnage to supply the same amount of product. Others added the Board's demand calculations were not considering growth in the juice and dried fruit markets that are being served by imported product. As a result, the Board recommended an additional economic adjustment of 48 million pounds (18 million due to fruit quality concerns and 30 million for expected deliveries). With this adjustment, and anticipated orchard diversion (25 million pounds) the Board's preliminary restricted percentage was 31 percent (96 million pounds divided by 313.5 million pounds).

The Board met again on September 13, 2018, to consider final volume regulation percentages for the 2018–19 season. The final percentages are based on the Board's reported production figures and the supply and demand information available in September.

The total production for the 2018–19 season was 299.2 million pounds, 45.3 million pounds below the Board's July

estimate. In addition, growers diverted 12.4 million pounds in the orchard, about half of what had been anticipated. As a result 286.8 million pounds would be available to market, 282.3 million pounds of which are in the restricted districts. Using the actual production numbers, and accounting for the recommended desirable carry-out and economic adjustment, as well as the market growth factor, the restricted percentage was recalculated.

The Board subtracted the carry-in figure used in July of 125.1 million pounds, from the optimum supply of 303 million pounds to determine 177.9 million pounds of 2018–19 production would be necessary to reach optimum supply. The Board subtracted the 177.9 million pounds from the actual production of 299.2 million pounds, resulting in a surplus of 121.3 million pounds of tart cherries.

The Board also revisited its earlier decision regarding an economic adjustment. Many in attendance expressed that the previously

recommended economic adjustment should be revisited to avoid placing excess fruit on the market. One member indicated the fruit quality in Michigan was better than anticipated in July. Other attendees indicated the adjustment for additional sales had been overstated. As a result, the Board recommended lowering the economic adjustment to 24 million pounds.

The recalculated surplus was reduced by subtracting the revised economic adjustment of 24 million pounds and the market growth factor of 22.3 million pounds, resulting in an adjusted surplus of 75 million pounds. The Board then divided this final surplus by the available production of 282.3 million pounds in the regulated districts (294.7 million pounds minus 12.4 million pounds of in-orchard diversion) to calculate a restricted percentage of 27 percent with a corresponding free percentage of 73 percent for the 2018–19 crop year, as outlined in the following table:

	Millions of pounds
<b>Final Calculations:</b>	
(1) Average sales of the prior three years .....	223
(2) Plus desirable carry-out .....	80
(3) Optimum supply calculated by the Board .....	303
(4) Carry-in as of July 1, 2018 .....	125.1
(5) Adjusted optimum supply (item 3 minus item 4) .....	177.9
(6) Board reported production .....	299.2
(7) Surplus (item 6 minus item 5) .....	121.3
(8) Total economic adjustments .....	24
(9) Market growth factor .....	22.3
(10) Adjusted Surplus (item 7 minus items 8 and 9) .....	75
(11) Supply in regulated districts .....	294.7
(12) In-Orchard Diversion .....	12.4
(13) Production minus in orchard diversion .....	282.3
<b>Final Percentages:</b>	
Restricted (item 10 divided by item 13 × 100) .....	27
Free (100 minus restricted percentage) .....	73

The final restriction of 27 percent is lower than the preliminary restriction percentage of 31 percent. The largest factor affecting this change was the final production numbers that came in below the Board's July estimate. Additionally, less fruit was diverted in orchard than anticipated and the Board revised its economic adjustment to 24 million pounds. The desired carry-out remained the same at 80 million pounds.

In discussing the calculation, several members indicated they believed the recommendation was too restrictive. They supported maintaining the economic adjustment at the original level, which would have resulted in a lower calculated restriction. Other

members stated that reducing the economic adjustment was reflective of industry conditions and expressed concern about putting too much fruit into the market.

Establishing free and restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially. Restricted percentages have benefited grower returns and helped stabilize the market as compared to those seasons prior to the implementation of the Order. The Board, based on its discussion of this issue and the result of the above calculations, believes the available

information indicates a restricted percentage should be established for the 2018–19 crop year to avoid oversupplying the market with tart cherries.

Consequently, the Board recommended final percentages of 73 percent free and 27 percent restricted by a vote of 13 in favor, 4 opposed, and 1 abstention. The Board could meet and recommend the release of additional volume during the crop year if conditions so warranted. The Secretary finds, from the recommendation and supporting information supplied by the Board, that designating final percentages of 73 percent free and 27 percent restricted would tend to effectuate the

declared policy of the Act, and so designates these percentages.

Additionally, the Board reviewed its rules regarding grower diversion, as this diversion option has become more of a common practice over the past few seasons. To receive grower diversion credit, the Order requires that the fruit left in the orchard must be marketable. With no definition of marketable in the Order, the Board had defined fruit as unmarketable if insects were found in any of the fruit sampled from the acreage marked for diversion.

In 2016, the Board formed a committee to investigate updating this policy based on recent infestations of spotted wing drosophila. The industry was concerned growers would not qualify for diversion if a zero-tolerance policy remained in effect, but also wanted to ensure orchards were properly maintained to prevent the spread of infestation. The Board modified its working definition of marketable to reflect aspects of the tolerances in an FDA Compliance Policy Guide (CPG Sec. 550.225 Cherries—Brined, Fresh, Canned and Frozen—Adulteration Involving Rot and Insect). Specifically, the Board recommended using a 5 percent tolerance for insects and a 7 percent tolerance for rot when sampling cherries for diversion. After applying the two tolerances for insects and rot over two harvests, the Board found these levels were effective. The Board discussed this issue at its meetings on September 13, 2018, and October 23, 2018, and unanimously recommended incorporating this change into the Order's rules and regulations.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 600 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the Order. Small agricultural producers are defined by

the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries utilized for processing during the 2017–18 season was approximately \$0.224 per pound. With total utilization at approximately 254 million pounds for the 2017–18 season, the total 2017–18 value of the crop utilized for processing is estimated at \$56.9 million. Dividing the crop value by the estimated number of producers (600) yields an estimated average receipt per producer of \$94,833. This is well below the SBA threshold for small producers.

A free on board (FOB) price of \$0.82 per pound for frozen tart cherries was reported by the Food Institute during the 2017–2018 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price by total utilization of 254.1 million pounds results in an estimated handler-level tart cherry value of \$208 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of \$5.2 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

The tart cherry industry in the United States is characterized by wide annual fluctuations in production. According to NASS, the pounds of tart cherry production for the years 2012 through 2017 were 85 million, 294 million, 304 million, 253 million, 329 million, and 260 million, respectively. Because of these fluctuations, supply and demand for tart cherries are rarely in balance.

Demand for tart cherries is inelastic, meaning changes in price have a minimal effect on total sales volume. However, prices are very sensitive to changes in supply, and grower prices vary widely in response to the large swings in annual supply. Grower prices per pound for processed utilization have ranged from a low of \$0.073 in 1987 to a high of \$0.588 per pound in 2012.

Because of this relationship between supply and price, oversupplying the market with tart cherries would have a sharp negative effect on prices, driving down grower returns. Aware of this economic relationship, the Board focuses on using the volume control authority in the Order to align supply

with demand and stabilize industry returns. This authority allows the industry to set free and restricted percentages as a way to bring supply and demand into balance. Free percentage cherries can be marketed by handlers to any outlet, while restricted percentage volume must be held by handlers in reserve, diverted, or used for exempted purposes.

This proposal would control the supply of tart cherries by establishing percentages of 73 percent free and 27 percent restricted for the 2018–19 crop year. These percentages should stabilize marketing conditions by adjusting supply to meet market demand and help improve grower returns. The proposal would regulate tart cherries handled in Michigan, New York, Utah, Washington, and Wisconsin. This proposal would also revise the regulations regarding grower diversion to codify the Board's definition of marketable fruit. The authority for this proposed action is provided in §§ 930.50, 930.51(a), 930.52, and 930.58. The Board recommended this action at meetings on September 13, 2018, and October 23, 2018.

This proposal would result in some fruit being diverted from the primary domestic markets. However, as mentioned earlier, the USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (<http://www.ams.usda.gov/publications/content/1982-guidelines-fruit-vegetable-marketing-orders>) specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. Under this proposal, the available quantity would be more than 150 percent of the average sales for the last three years.

In addition, there are secondary uses available for restricted fruit, including the development of new products, sales into new markets, the development of export markets, and being placed in reserve. While these alternatives may provide different levels of return than the sales to primary markets, they play an important role for the industry. The areas of new products, new markets, and the development of export markets utilize restricted fruit to develop and expand the markets for tart cherries. In 2017–18, these activities accounted for over 82 million pounds in sales, 27 million of which were exports. These numbers represent increases of 45 million pounds and 11.4 million pounds respectively.

Placing tart cherries into reserves is also a key part of balancing supply and demand. Although handlers bear the handling and storage costs for fruit in reserve, reserves stored in large crop

years are used to supplement supplies in short crop years. The reserves help the industry to mitigate the impact of oversupply in large crop years, while allowing the industry to supply markets in years when production falls below demand. Further, storage and handling costs are more than offset by the increase in price when moving from a large crop to a short crop year.

The Board recommended a carry-out of 80 million pounds and made a demand adjustment of 24 million pounds in order to make the regulation less restrictive. With 125.1 million pounds of carry-in, 4.5 million pounds of production in the unregulated districts, and 207.3 million pounds of free tonnage from the regulated districts, 336.9 million pounds of fruit would be available for the domestic market. This is nearly 50 million pounds greater than the tonnage made available in the previous season. Even with the recommended restriction, the domestic market would have an ample supply of tart cherries. Further, should marketing conditions change, and market demand exceed existing supplies, the Board could meet and recommend the release of an additional volume of cherries. Consequently, it is not anticipated that this proposal would unduly burden growers or handlers.

While this proposal could result in some additional costs to the industry, these costs are outweighed by the benefits. The purpose of setting restricted percentages is to attempt to bring supply and demand into balance. If the primary market (domestic) is oversupplied with cherries, grower prices decline substantially. Without volume control, the primary market would likely be oversupplied, resulting in lower grower prices. In addition, the industry could start to build large amounts of unwanted inventories, which would also have a depressing effect on grower returns.

An econometric model has been developed to assess the impact volume control has on the price growers receive for their product. Based on the model, the use of volume control would have a positive impact on grower returns for this crop year. With volume control, grower prices are estimated to be approximately \$0.04 per pound higher than without restrictions. In addition, absent volume control, the industry could start to build large amounts of unwanted inventories. These inventories would have a depressing effect on grower prices.

Retail demand is assumed to be highly inelastic, which indicates changes in price do not result in significant changes in the quantity

demand. Consumer prices largely do not reflect fluctuations in cherry supplies. Therefore, this proposal should have little or no effect on consumer prices and should not result in a reduction in retail sales.

The incorporation of a tolerance for insects and rot in diverted fruit would align the Order's grower diversion rules and regulations with current industry practices. The tolerances should make it possible for more growers to participate in diversion during periods of oversupply, while encouraging proper pest management. Proper pest management helps reduce costs by decreasing incidences of infestation. Further, the use of grower diversion removes excess supply from the market without incurring the costs of harvesting, processing, and storage.

The proposed tolerance for insects and rot for cherries diverted in the orchard would provide clear guidance for compliance with Order provisions, encourage proper pest management, and align the Order's rules with industry standards. Growers, regardless of size, would benefit from the addition of these tolerances.

The free and restricted percentages established by this proposal would provide the market with optimum supply and would apply uniformly to all regulated handlers in the industry, regardless of size. As the restriction represents a percentage of a handler's volume, the costs, when applicable, are proportionate and should not place an extra burden on small entities as compared to large entities.

The stabilizing effects of this proposal would benefit all handlers by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all growers and handlers by allowing them to better anticipate the revenues their tart cherries would generate. Growers and handlers, regardless of size, would benefit from the stabilizing effects of the volume restriction.

The Board had extensive discussions on carry-out inventory alternatives. The alternatives included five motions that failed to pass, ranging from 50 million pounds to 100 million pounds. The Board determined that if the carry-out number was too large, it could have a negative impact on grower returns. Some attendees indicated excess carry-in over the past few seasons has had a negative effect on returns and that growers are seeking relief. After consideration of the alternatives, the Board recommended a carry-out of 80 million pounds.

The Board also weighed alternatives when discussing the economic adjustment. At its July meeting, the Board recommended a 48 million pound adjustment to account for fruit quality concerns and expected sales. One member proposed an additional 40-million-pound adjustment to counter imports of dried and frozen cherries, while other members favored a lower amount.

When the final production numbers were reviewed in September, the Board revisited the economic adjustment. Members indicated fruit quality was still an issue, but yields were better than initially anticipated. Members also stated that with tough international markets, the additional sales may have been overstated. Members from the Western states in particular were concerned that a large shift in the restriction percentage following harvest would disrupt the overall market and petitioned the Board to reconsider the adjustment. After discussion, the Board adopted an adjustment of 24 million pounds determining this amount would best meet the industry's sales needs. Thus, the alternatives were rejected.

Regarding grower diversion requirements, the Board initially proposed a broader set of requirements including spray protocols and destruction of diverted fruit in order to better control infestation. The original proposal called for annual determination of which steps would be required in each district. As research is still evolving on how best to deal with spotted wing drosophila infestations, preferred methods of dealing with the diverted fruit were also subject to change. Thus, the Board voted to codify only the tolerance for marketability.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0177, Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes are necessary in those requirements as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This proposal would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Board's meetings were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and participate in Board deliberations on all issues. Like all Board meetings, the July 6, 2018, September 13, 2018, and October 23, 2018, meetings were public meetings, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this proposal on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

#### **PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN**

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Amend § 930.158 by revising paragraph (a) to read as follows:

#### **§ 930.158 Grower diversion and grower diversion certificates.**

(a) *Grower diversion certificates.* The Board may issue diversion certificates to growers in districts subject to volume regulation who have voluntarily elected

to divert in the orchard all or a portion of their tart cherry production which otherwise, upon delivery to handlers, would become restricted percentage cherries. Growers may offer the diversion certificate to handlers in lieu of delivering cherries. Handlers may redeem diversion certificates with the Board through June 30 of each crop year. After June 30 of the crop year that crop year's grower diversion certificates are no longer valid. Cherries that have reached a harvestable, marketable condition will be eligible for diversion. Diversion will not be granted to growers whose fruit was destroyed before it set and/or matured on the tree, or whose fruit is unmarketable. If marketable fruit were to be damaged or destroyed by acts of nature such as storms or hail diversion credit could be granted. To be considered marketable for the purposes of this section, sampled fruit may not exceed a 5 percent tolerance for insects or a 7 percent tolerance for rot.

\* \* \* \* \*

■ 3. Revise § 930.256 and its heading title to read as follows:

#### **§ 930.256 Free and restricted percentages for the 2018–19 crop year.**

The percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2018, which shall be free and restricted, respectively, are designated as follows: Free percentage, 73 percent and restricted percentage, 27 percent.

Dated: April 30, 2019.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2019–09152 Filed 5–7–19; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF ENERGY**

### **10 CFR Parts 430 and 431**

[EERE–2018–BT–TP–0020]

#### **Energy Conservation Program: Notice of Request for Information on the Measurement of Average Use Cycles or Periods of Use in DOE Test Procedures**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Extension of public comment period.

**SUMMARY:** On March 18, 2019, the U.S. Department of Energy (DOE) published a request for information (RFI) on the measurement of average cycles or periods of use in DOE test procedures in

the **Federal Register**. This document announces an extension of the public comment period for submitting comments on the RFI. The comment period is extended to May 31, 2019.

**DATES:** The comment period for the RFI published on March 18, 2019 (84 FR 9721) is extended. DOE will accept comments, data, and information regarding this RFI received no later than May 31, 2019.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2018–BT–TP–0020, by any of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

2. *Email:* To [UseCycleRFI2018TP0020@ee.doe.gov](mailto:UseCycleRFI2018TP0020@ee.doe.gov). Include docket number EERE–2018–BT–TP–0020 in the subject line of the message.

3. *Postal Mail:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, Suite 600, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted.

*Docket:* The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web page can be found at <http://www.regulations.gov/docket?D=EERE-2018-BT-TP-0020>. The docket web page will contain simple instructions on how to access all documents, including public comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 287-6111. Email: [Jennifer.Tiedeman@hq.doe.gov](mailto:Jennifer.Tiedeman@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On March 18, 2019, DOE published a notice in the **Federal Register** soliciting public comment on its RFI on the measurement of average use cycles or periods of use in DOE test procedures. 84 FR 9721. The RFI provided for the submission of comments by May 17, 2019. The Air Conditioning, Heating, and Refrigeration Institute (AHRI) has requested a two-week extension of the public comment period, stating that it needs additional time to generate a response based on the input of its members. DOE has determined that an extension of the public comment period is appropriate based on the foregoing reason and is hereby extending the comment period. DOE will consider any comments received by midnight on May 31, 2019, and deems any comments received by that time to be timely submitted.

Signed in Washington, DC, on May 1, 2019.

**Steven Chalk,**

*Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2019-09437 Filed 5-7-19; 8:45 am]

**BILLING CODE 6450-01-P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1003

[Docket No. CFPB-2019-0020]

RIN 3170-AA97

### Home Mortgage Disclosure (Regulation C) Data Points and Coverage

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is issuing this Advance Notice of Proposed Rulemaking (ANPR) to solicit comments relating to whether to make changes to the data points that the Bureau's October 2015 final rule implementing the Home Mortgage Disclosure Act (HMDA) added to Regulation C or revised to require additional information. Additionally, the Bureau is issuing this ANPR to solicit comments relating to the requirement that

institutions report certain business- or commercial-purpose transactions under Regulation C.

**DATES:** Comments must be received by July 8, 2019.

**ADDRESSES:** You may submit responsive information and other comments, identified by Docket No. CFPB-2019-0020, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Email:* 2019-ANPR-HMDA@cfpb.gov. Include Docket No. CFPB-2019-0020 in the subject line of the message.

- *Mail:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

*Instructions:* When responding to a particular question, please note the question number at the top of the response.

You are not required to answer all questions to receive consideration of your comments. The Bureau encourages the early submission of comments. All submissions must include the document title and docket number.

Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10:00 a.m. and 5:00 p.m. eastern daylight time. You can make an appointment to inspect the documents by telephoning 202-435-7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information.

The Bureau invites comment on all aspects of the ANPR from all interested parties. In the event that a respondent may have concerns about revealing proprietary or personal information, the Bureau welcomes comments from attorneys, consumer advocacy organizations, trade associations, or other representatives that do not identify their clients.

**FOR FURTHER INFORMATION CONTACT:** Jaydee DiGiovanni or Shaakira Gold-Ramirez, Counsels; or Amanda Quester or Alexandra Reimelt, Senior Counsels, Office of Regulations, at 202-435-7700 or <https://reginquiries.consumerfinance.gov>. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau is issuing this ANPR to solicit information relating to whether to make changes to the data points that the Bureau's October 2015 final rule implementing HMDA (2015 HMDA Rule) added to Regulation C or revised to require additional information. The Bureau also seeks comments relating to the requirement that institutions report certain business- or commercial-purpose transactions under Regulation C.

## I. Background

### A. HMDA and Regulation C

HMDA requires certain depository institutions and for-profit nondepository institutions to collect, record, and report data about originations and purchases of mortgage loans, as well as mortgage loan applications that do not result in originations (for example, applications that are denied or withdrawn).<sup>1</sup> By its statutory terms, HMDA defines "mortgage loan" as (1) "a loan which is secured by residential real property," or (2) a "home improvement loan."<sup>2</sup> The purposes of HMDA are to provide the public with loan data that can be used: (i) To help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes.<sup>3</sup> Prior to the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Regulation C required reporting of 22 data points and allowed for optional reporting of reasons an institution denied an application.<sup>4</sup>

<sup>1</sup> To simplify review of this document, the Bureau generally refers herein to the obligation to report data instead of listing all of these obligations in each instance.

<sup>2</sup> 12 U.S.C. 2802(a)(2).

<sup>3</sup> 12 CFR 1003.1.

<sup>4</sup> As used in this document, the term "data point" refers to items of information that entities are required to compile and report, generally listed in separate paragraphs in Regulation C. Some data points are reported using multiple data fields.

### B. Dodd-Frank Act

In 2010, Congress enacted the Dodd-Frank Act, which amended HMDA and transferred HMDA rulemaking authority and other functions from the Board of Governors of the Federal Reserve System (Board) to the Bureau.<sup>5</sup> Among other changes, the Dodd-Frank Act expanded the scope of information relating to mortgage applications and loans that institutions must compile, maintain, and report under HMDA. Specifically, the Dodd-Frank Act amended HMDA section 304(b)(4) by adding one new data point, the age of loan applicants and mortgagors. The Dodd-Frank Act also added new HMDA section 304(b)(5) and (6), which requires the following additional new data points: Information relating to the total points and fees payable at origination (total loan costs or total points and fees); the difference between the annual percentage rate (APR) associated with the loan and a benchmark rate or rates for all loans (rate spread); the term of any prepayment penalty; the value of real property to be pledged as collateral; the term of the loan and of any introductory interest rate on the loan; the presence of contract terms allowing non-amortizing payments; the channel through which the application was made; and the credit scores of applicants and mortgagors.<sup>6</sup> New HMDA section 304(b)(6) in addition authorizes the Bureau to require, “as [it] may determine to be appropriate,” a unique identifier that identifies the loan originator, a universal loan identifier (ULI), and the parcel number that corresponds to the real property pledged as collateral for the mortgage loan.<sup>7</sup> New HMDA section 304(b)(5)(D) and (6)(J) further provides the Bureau with the authority to mandate reporting of “such other information as the Bureau may require.”<sup>8</sup>

### C. 2015 HMDA Rule, 2017 HMDA Rule, December 2017 Statement, and EGRRCPA

In October 2015, the Bureau issued the 2015 HMDA Rule.<sup>9</sup> Most of the 2015 HMDA Rule took effect on January 1, 2018.<sup>10</sup> The 2015 HMDA Rule, among other things, implemented the new data points specified in the Dodd-Frank Act and re-adopted certain pre-existing data points added to Regulation C by the

Board. The 2015 HMDA Rule also added a number of additional data points pursuant to the Bureau’s discretionary authority under HMDA section 304(b)(5) and (6) and revised certain pre-existing data points to provide for greater specificity or additional information in reporting.

The Bureau added the following data points to Regulation C to implement specific provisions added by the Dodd-Frank Act in HMDA section 304(b)(4), (5)(A) through (C), and (6)(A) through (I): ULI;<sup>11</sup> property address; age; rate spread for all loans;<sup>12</sup> credit score; total loan costs or total points and fees; prepayment penalty term; loan term; introductory rate period; non-amortizing features; property value; application channel; and mortgage loan originator identifier.<sup>13</sup>

The Bureau also re-adopted certain data points in the 2015 HMDA Rule that are substantially similar or identical to pre-existing data points added to Regulation C by the Board. These data points include the following: Application date; loan type; whether the application or covered loan involved a request for a preapproval of a home purchase loan under a preapproval program; construction method for the dwelling related to the subject property;<sup>14</sup> the amount of the covered loan or the amount applied for; the action taken by the financial institution and the date of the action taken; State; county; census tract; sex; income; type of purchaser; whether the loan is subject to the Home Ownership and Equity Protection Act of 1994 (HOEPA); lien status of the subject property;<sup>15</sup> and the total number of individual dwelling

units contained in the dwelling related to the loan (number of units).<sup>16</sup>

In other instances, the 2015 HMDA Rule revised pre-existing Regulation C data points established by the Board to require additional information be reported for those data points. Such revised data points include the following: The purpose of the loan or application; occupancy type; ethnicity; race; and legal entity identifier (LEI).<sup>17</sup>

Additionally, the Bureau added the following new data points in the 2015 HMDA Rule pursuant to its discretionary authority under HMDA section 304(b)(5) and (6): Reasons for denial of a loan application, which were optionally reported under the Board’s rule but became mandatory in the 2015 HMDA Rule;<sup>18</sup> the total origination charges associated with the loan; the total points paid to the lender to reduce the interest rate of the loan (discount points); the amount of lender credits; the interest rate applicable at closing or account opening; the debt-to-income ratio; the ratio of the total amount of debt secured by the property to the value of the property (combined loan-to-value ratio); for transactions involving manufactured homes, whether the loan or application is or would have been secured by a manufactured home and land or by a manufactured home and not land (manufactured home secured property type); the land property interest for loans or applications related to manufactured housing (manufactured home land property interest); the number of individual dwellings units that are income-restricted pursuant to Federal, State, or local affordable housing programs (multifamily affordable units); information related to the automated underwriting system used in evaluating an application and the result generated by the automated underwriting system; whether the loan is a reverse mortgage; whether the loan is an open-end line of credit; and whether the loan is primarily for a business or commercial purpose.<sup>19</sup>

<sup>11</sup> Prior to the passage of the Dodd-Frank Act, the Board required reporting of an identifying number for the loan or application but did not require that the identifier be universal. HMDA section 304(b)(6)(G) requires reporting of, “as the Bureau may determine to be appropriate, a universal loan identifier.”

<sup>12</sup> Prior to the passage of the Dodd-Frank Act, the Board required financial institutions to report rate spread for higher-priced mortgage loans. 67 FR 7222 (Feb. 15, 2002); 67 FR 43218 (June 27, 2002). HMDA section 304(b)(5)(B) requires reporting of rate spread for all loans.

<sup>13</sup> 12 CFR 1003.4(a)(1)(i), (a)(9)(i), (a)(10)(ii), and (a)(12), (15), (17), (22), (25) through (28), and (33) and (34).

<sup>14</sup> Construction method and number of units, together, replaced property type, the pre-existing Regulation C data point; the information required by the new data points is very similar to what the Board required, but institutions now must report the precise number of units rather than categorizing dwellings into one-to-four family dwellings and multifamily dwellings.

<sup>15</sup> The 2015 HMDA Rule extends the requirement to report lien status to purchased loans. 80 FR 66128, 66201 (Oct. 28, 2015).

<sup>16</sup> 12 CFR 1003.4(a)(1)(ii), (a)(2), (4), (5), and (7), (a)(8)(i) and (ii), (a)(9)(ii), (a)(10)(i) and (iii), and (a)(11), (13) and (14), and (31).

<sup>17</sup> 12 CFR 1003.4(a)(3), (a)(6), (a)(10)(i); 12 CFR 1003.5(a)(3).

<sup>18</sup> Financial institutions regulated by the Office of the Comptroller of the Currency (OCC) are also required to report reasons for denial on their HMDA loan/application registers pursuant to 12 CFR 27.3(a)(1)(i) and 128.6. Similarly, pursuant to regulations transferred from the Office of Thrift Supervision, certain financial institutions supervised by the Federal Deposit Insurance Corporation (FDIC) are required to report reasons for denial on their HMDA loan/application registers. 12 CFR 390.147.

<sup>19</sup> 12 CFR 1003.4(a)(16), (18) through (21), (23) and (24), (29) and (30), (32), and (35) through (38).

<sup>5</sup> Public Law 111–203, 124 Stat. 1376, 1980, 2035–38, 2097–101 (2010).

<sup>6</sup> Dodd-Frank Act section 1094(3), *amending* HMDA section 304(b), 12 U.S.C. 2803(b).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Home Mortgage Disclosure (Regulation C), 80 FR 66128 (Oct. 28, 2015).

<sup>10</sup> *Id.* at 66128, 66256–58.

The 2015 HMDA Rule also requires reporting of applications for, and originations of, dwelling-secured business- or commercial-purpose closed-end mortgage loans and open-end lines of credit for home purchase, refinancing, or home improvement purposes.<sup>20</sup> Prior to the 2015 HMDA Rule, Regulation C covered closed-end, business- or commercial-purpose loans made to purchase, refinance, or improve a dwelling. Thus, the 2015 HMDA Rule revised coverage of business- or commercial-purpose transactions by: (1) Adding the dwelling-secured test, and (2) requiring reporting of dwelling-secured, business- or commercial-purpose open-end lines of credit for the purpose of home purchase, refinancing, or home improvement.

Before institutions had to comply with the new and revised data reporting requirements in 2015 HMDA Rule, the Bureau in September 2017 issued a final rule amending certain aspects of the 2015 HMDA Rule (2017 HMDA Rule).<sup>21</sup> Among other things, the 2017 HMDA Rule addressed certain technical errors in the 2015 HMDA Rule, eased the burden of reporting certain data requirements, and clarified key terms to facilitate compliance with Regulation C.

The Bureau issued a statement in December 2017 (December 2017 Statement) in which it indicated that it intended to engage in a rulemaking to reconsider various aspects of the 2015 HMDA Rule, such as the institutional and transactional coverage tests and the rule's discretionary data points.<sup>22</sup> This ANPR is part of that rulemaking.

<sup>20</sup> 80 FR 66128, 66169–72 (Oct. 28, 2015). As used in Regulation C, the term dwelling includes a multifamily residential structure or community. 12 CFR 1003.2(f); comment 2(f)–2.

<sup>21</sup> Home Mortgage Disclosure (Regulation C), 82 FR 43088 (Sept. 13, 2017).

<sup>22</sup> Bureau of Consumer Fin. Prot., “Statement with Respect to HMDA Implementation” (Dec. 21, 2017), [https://files.consumerfinance.gov/f/documents/cfbp\\_statement-with-respect-to-hmda-implementation\\_122017.pdf](https://files.consumerfinance.gov/f/documents/cfbp_statement-with-respect-to-hmda-implementation_122017.pdf). Additionally, in recognition of the significant systems and operations challenges needed to adjust to the revised regulation, the December 2017 Statement indicated that, for HMDA data collected in 2018 and reported in 2019, the Bureau does not intend to require data resubmission unless data errors are material. The December 2017 Statement also explained that the Bureau does not intend to assess penalties with respect to errors in data collected in 2018 and reported in 2019. As explained in the statement, any supervisory examinations of 2018 HMDA data will be diagnostic to help institutions identify compliance weaknesses and will credit good-faith compliance efforts. The statement also indicated that collection and submission of the 2018 HMDA data will provide financial institutions an opportunity to identify any gaps in their implementation of amended Regulation C and make improvements in their HMDA compliance management systems for future years. The Board, the FDIC, the National Credit Union Administration, and the OCC released similar

On May 24, 2018, the President signed the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) into law.<sup>23</sup> Section 104(a) of the EGRRCPA amends section 304(i) of HMDA by adding partial exemptions from HMDA's requirements for certain transactions of insured depository institutions and insured credit unions. Certain of the data points about which the Bureau is soliciting information in this ANPR are covered under the EGRRCPA partial exemptions.<sup>24</sup>

#### *D. Feedback Since Issuing 2015 HMDA Rule and 2017 HMDA Rule*

Since issuing the 2015 HMDA Rule and 2017 HMDA Rule, the Bureau has heard concerns about the burden associated with reporting certain of the new or revised data points relative to the value of the information in serving HMDA's purposes. The Bureau has also heard continuing concerns about Regulation C's coverage of certain business- or commercial-purpose loans. In addition, although the 2015 HMDA Rule was outside the scope of the Bureau's Call for Evidence series of Requests for Information (RFIs)<sup>25</sup> issued in spring 2018, the Bureau received several comments regarding HMDA in response to the RFIs. The Bureau has considered those comments as well as other input it has received from stakeholders through its efforts to monitor and support industry implementation of the 2015 HMDA Rule and the 2017 HMDA Rule in developing this document.

Among other things, some industry stakeholders have advised the Bureau that it is more burdensome to report information about whether a borrower owns or leases the land on which a manufactured home is located<sup>26</sup> than the Bureau anticipated in 2015 because such information is not generally collected in the ordinary course of business. Additionally, prior to the 2015 HMDA Rule, financial institutions were required to ask loan applicants to

statements relating to their supervisory examinations. *Id.*

<sup>23</sup> Public Law 115–174, 132 Stat. 1296 (2018).

<sup>24</sup> See Partial Exemptions from the Requirements of the Home Mortgage Disclosure Act under the Economic Growth, Regulatory Relief, and Consumer Protection Act (Regulation C), 83 FR 45325, 45328–29 (Sept. 7, 2018) (Bureau's Interpretive and Procedural Rule clarifying and implementing EGRRCPA).

<sup>25</sup> *E.g.*, Request for Information Regarding the Bureau's Adopted Regulations and New Rulemaking Authorities, 83 FR 12286 (Mar. 21, 2018); Request for Information Regarding the Bureau's Inherited Regulations and Inherited Rulemaking Authorities, 83 FR 12881 (Mar. 26, 2018).

<sup>26</sup> 80 FR 66128, 66226–27 (Oct. 28, 2015).

identify their ethnicity using aggregate categories (Hispanic or Latino, not Hispanic or Latino) and to do the same for race (*e.g.*, Asian). Pursuant to the 2015 HMDA Rule, institutions are now required to request that the applicant self-identify their ethnicity using disaggregated categories (*e.g.*, Cuban or Mexican) and their race using disaggregated categories (*e.g.*, Chinese or Korean) in addition to the pre-existing aggregate categories.<sup>27</sup> Some financial institutions have stated that these new requirements can prolong and complicate the application process. In response to the Bureau's RFIs, one credit union expressed concern about complying with the new disaggregated data field requirements. On the other hand, one community group stated that disaggregated data on race and ethnicity helps to identify predatory lending and that such data could have helped to avoid the negative impacts on many communities resulting from the housing crisis that began in 2007.

The 2015 HMDA Rule also requires financial institutions to complete free-form text fields for certain data points if certain circumstances are met. For example, the 2015 HMDA Rule made reporting of reasons for denial mandatory and provides various reporting options from which financial institutions may choose.<sup>28</sup> The 2015 HMDA Rule requires that financial institutions include a reason for loan denial in a free-form text data field if the institution chooses the option of “Other.”<sup>29</sup> Several financial institutions have expressed that using this free-form text field can be a cumbersome process.

Additionally, in the past year the Bureau has heard from several industry stakeholders requesting that the Bureau should exclude from Regulation C's coverage business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling. For example, in response to the Bureau's RFIs a few industry commenters stated that requiring reporting of such transactions is not necessary to fulfilling the purposes of HMDA and that the burden of reporting them does not outweigh the benefits of doing so.

## **II. Request for Comment**

The Bureau is issuing this ANPR to solicit comments relating to whether to make changes to (1) the data points that the 2015 HMDA Rule added to Regulation C or revised to require additional information, and (2)

<sup>27</sup> *Id.* at 66187–94.

<sup>28</sup> *Id.* at 66205.

<sup>29</sup> *Id.* at 66205–6.

Regulation C’s coverage of business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling. The Bureau will carefully consider the public’s input as it determines whether to formulate a proposed rule relating to changing any of these data points from the 2015 HMDA Rule and in deciding whether to address certain business- or commercial-purpose transactions as part of any upcoming rulemaking.

**A. Data Points Required by 2015 HMDA Rule**

The Bureau is soliciting comment, data, and information from the public

relating to whether to make changes to the data points that the 2015 HMDA Rule added to Regulation C or revised to require additional information.<sup>30</sup> One of the Bureau’s goals in gathering information in this ANPR is to ensure that the data requirements established in the 2015 HMDA Rule appropriately balance the benefits and burdens associated with data reporting. Financial institutions were required to report their first data pursuant to the 2015 HMDA Rule by March 1, 2019. Now that financial institutions have completed their first submissions of the additional information required under

the 2015 HMDA Rule and institution-specific submissions are available to the public, the Bureau believes that they and other stakeholders may have additional and more accurate information to offer relating to the benefits and burdens associated with the data points required by the 2015 HMDA Rule. Below is a table that lists the data points that the Bureau added or revised to require additional information pursuant to the 2015 HMDA Rule.

**TABLE 1—DATA POINTS ADDED OR REVISED TO REQUIRE ADDITIONAL INFORMATION PURSUANT TO THE 2015 HMDA RULE**

Data points added by 2015 HMDA Rule to implement Dodd-Frank Act requirements	Data points added by 2015 HMDA Rule pursuant to discretionary authority	Data points revised by 2015 HMDA Rule to require additional information
<ul style="list-style-type: none"> <li>• Universal Loan Identifies (ULI)</li> <li>• Property Address</li> <li>• Age</li> <li>• Rate Spread for all loans</li> <li>• Credit Score</li> <li>• Total Loan Cost or Total Points and Fees</li> <li>• Prepayment Penalty Term</li> <li>• Loan Term</li> <li>• Introductory Rate Period</li> <li>• Non-Amortizing Features</li> <li>• Property Value</li> <li>• Application Channel</li> <li>• Mortgage Loan Originator Identifier</li> </ul>	<ul style="list-style-type: none"> <li>• Reasons for Denial</li> <li>• Origination Charges</li> <li>• Discount Points</li> <li>• Lender Credits</li> <li>• Interest Rate</li> <li>• Debt-to-Income Ratio</li> <li>• Combined Loan to Value Ratio</li> <li>• Manufactured Home Secured Property Type</li> <li>• Manufactured Home Land Property Interest</li> <li>• Multifamily Affordable Units</li> <li>• Automated Underwriting System</li> <li>• Reverse Mortgage Flag</li> <li>• Open-End Line of Credit Flag</li> <li>• Business or Commercial Purpose Flag</li> </ul>	<ul style="list-style-type: none"> <li>• Loan Purpose</li> <li>• Occupancy Type</li> <li>• Ethnicity</li> <li>• Race</li> <li>• Legal Entity Identifier (LEI)</li> </ul>

The Bureau encourages commenters to be specific and, where possible, to include any relevant empirical evidence. Comment is requested from all interested parties on the following four topics:

1. Please identify any new data point or any data point revised to require additional information from the table above for which the cost of collecting and reporting the information does not justify the benefit that the information collected and reported provides in furthering the purposes of HMDA. For each such data point:

i. Please describe the nature and magnitude of any operational challenges in collecting and reporting the required information.

ii. What ongoing costs are incurred in collecting and reporting the required information? Has the Bureau’s new web-based data submission and edit-check system affected ongoing costs of collecting and reporting the required

information? If so, how and how much? To what extent are the data point’s requirements aligned with industry standards, and how does that affect ongoing costs of collecting and reporting the required information?

iii. Would financial institutions generally collect the required information in the ordinary course of business absent Regulation C requirements? If so, what are the incremental costs associated with reporting the required information? If not, what are the costs associated with collecting and reporting the required information?

iv. How much value does the data point provide in furthering the purposes of HMDA?

2. The 2015 HMDA Rule requires financial institutions to complete free-form text fields for certain data points when certain circumstances are met. For each free-form text field required by the 2015 HMDA Rule:

i. What are the costs of providing information through the free-form text field?

ii. What are the benefits of providing information through the free-form text field?

iii. Are there better alternatives to providing information than through the free-form text field?

3. Are there other considerations the Bureau should take into account in deciding whether to propose to eliminate or revise any new data point or revised data point from the 2015 HMDA Rule?

4. Are there new or revised data points under the 2015 HMDA Rule for which more explanation is needed to clarify the collection and reporting requirements? If so, please identify any data point for which additional clarity could reduce the costs associated with collecting and reporting the data and improve the value of the data in furthering the purposes of HMDA.

<sup>30</sup> As discussed above in part I.C, many of the data points in the 2015 HMDA Rule implement data points specified in the Dodd-Frank Act or re-adopt pre-existing data points added to Regulation C by the Board. Other data points, however, were added

pursuant to the Bureau’s discretionary authority provided by the Dodd-Frank Act or revise pre-existing data points to require additional information. The type or extent of changes the Bureau may propose relating to any of these data

points in a future notice of proposed rulemaking may vary depending on the category under which the data point falls.

### B. Coverage of Certain Business- or Commercial-Purpose Transactions

The Bureau seeks to assess the extent to which requiring reporting of information on business- or commercial-purpose loans made to a non-natural person and secured by a multifamily dwelling imposes burdens on financial institutions and furthers HMDA's purposes.<sup>31</sup>

The Bureau seeks information that might assist the Bureau in deciding whether to propose to exclude such transactions from HMDA's requirements, including information about the following:

5. The value that data on such transactions provides in serving HMDA's purposes;
6. Other benefits associated with reporting such transactions; and
7. The burden imposed by the requirement to report data on such transactions.

Dated: April 26, 2019.

**Kathleen L. Kraninger,**

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019-08979 Filed 5-7-19; 8:45 am]

BILLING CODE 4810-AM-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. FAA-2018-1016; Notice No. 25-19-06-SC]

#### Special Conditions: The Boeing Company Model 777-9 Airplane; Electronic Flight-Control System and Control-Surface-Position Awareness

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

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

**SUMMARY:** This action proposes special conditions for The Boeing Company (Boeing) Model 777-9 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an electronic flight-control system requiring control-surface-position

awareness. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Send comments on or before June 24, 2019.

**ADDRESSES:** Send comments identified by Docket No. FAA-2018-1016 using any of the following methods:

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Joe Jacobsen, Airplane & Flight Crew Interface Section, AIR-671, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone: 206-231-3158; email: [joe.jacobsen@faa.gov](mailto:joe.jacobsen@faa.gov).

### SUPPLEMENTARY INFORMATION:

#### Comments Invited

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

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

#### Background

On December 6, 2013, Boeing applied for an amendment to Type Certificate No. T00001SE to include the new 777-9 airplane. This airplane, which is a derivative of the Boeing Model 777 airplane currently approved under Type Certificate No. T00001SE, is a twin-engine, transport-category airplane with seating for 495 passengers and a maximum takeoff weight of 775,000 pounds.

#### Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777-9 airplane meets the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777-9 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777-9 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-

<sup>31</sup> HMDA's purposes are: (i) To help determine whether financial institutions are serving the housing needs of their communities; (ii) to assist public officials in distributing public-sector investment so as to attract private investment to areas where it is needed; and (iii) to assist in identifying possible discriminatory lending patterns and enforcing antidiscrimination statutes. 12 CFR 1003.1.

certification requirements of 14 CFR part 36.

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

### Novel or Unusual Design Features

The Boeing Model 777–9 airplane will incorporate the following novel or unusual design feature:

An electronic flight-control system requiring control-surface-position awareness.

### Discussion

With a response-command type of flight-control system and no direct coupling from the cockpit controller to control surface, such as on the Boeing Model 777 and 787 airplanes, the pilot is not aware of the actual surface-deflection position during flight maneuvers. This feature of this design is novel and unusual when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. These special conditions are intended to contain the additional safety standard.

Some unusual flight conditions, arising from atmospheric conditions, or airplane or engine failures, or both, may result in full or nearly full control-surface deflection. Unless the flightcrew is made aware of excessive deflection or impending control-surface deflection limiting, piloted or the automated flight-control system control of the airplane could be inadvertently continued in a way that would cause loss of control, or other unsafe handling or performance situations.

The special conditions require that suitable annunciation be provided to the flightcrew when a flight condition exists in which nearly full control-surface deflection occurs. Suitability of such an annunciation must take into account that some pilot-demanded maneuvers, such as a rapid roll, are necessarily associated with intended full or nearly full control-surface deflection. Simple alerting systems, which would function in both intended and unexpected control-limiting situations, must be properly balanced between providing needed crew awareness and avoiding nuisance warnings.

The special conditions are derived initially from standardized requirements the Aviation Rulemaking Advisory Committee (ARAC) developed, a committee comprising representatives of the FAA, Europe's Joint Aviation Authorities (now replaced by the European Aviation Safety Agency), and industry representatives. In the case of

some of these requirements, a draft notice of proposed rulemaking has been prepared but no final rule has yet been issued.

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

### Applicability

As discussed above, these proposed special conditions are applicable to the Boeing Model 777–9 airplane. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

### Conclusion

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

### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

### Authority Citation

The authority citation for these special conditions is as follows:

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

### The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 777–9 airplanes.

In addition to compliance with §§ 25.143, 25.671, and 25.672, the following proposed special conditions apply.

1. The system design must ensure that the flightcrew is made suitably aware whenever the primary control means nears the limit of control authority. This indication should direct the pilot to take appropriate action to avoid the unsafe condition in accordance with appropriate airplane flight manual (AFM) instructions. Depending on the application, suitable annunciations may include flight-deck control position, annunciator light, or surface position indicators. Furthermore, this requirement applies at limits of control authority, not necessarily at limits of any individual surface travel.

2. Suitability of such a display or alerting must take into account that some pilot-demanded maneuvers are necessarily associated with intended full performance, which may require

full surface deflection. Therefore, simple alerting systems, which would function in both intended or unexpected control-limiting situations, must be properly balanced between needed flightcrew awareness and nuisance factors. A monitoring system, which might compare airplane motion, surface deflection, and pilot demand, could be useful for eliminating nuisance alerting.

Issued in Des Moines, Washington, on May 1, 2019.

**Victor Wicklund,**

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

[FR Doc. 2019–09267 Filed 5–7–19; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2019–0254; Product Identifier 2019–NM–011–AD]

RIN 2120–AA64

#### Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A318 and A319 series airplanes, Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes, and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. This proposed AD was prompted by a report that cracks were detected on frame (FR) 16 and FR 20 web holes and passenger door intercostal fitting holes at the door stop fitting locations. This proposed AD would require repetitive rototest inspections of the holes at the door stop fittings for any cracking, and corrective actions if necessary, as specified in an European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by June 24, 2019.

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

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Fax: 202-493-2251.
- Mail: U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- **Hand Delivery:** Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the incorporation by reference (IBR) material described in the “Related IBR material under 1 CFR part 51” section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this

IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material 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 in the AD docket on the internet at *http://www.regulations.gov*.

#### 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-2019-0254; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800-647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

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

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2019-0254; Product Identifier 2019-NM-011-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM 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 NPRM.

#### Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018-0289, dated December 21, 2018 (“EASA AD 2018-0289”) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus SAS Model A318 and A319 series airplanes, Model A320-211, -212, -214, -216, -231, -232, and -233 airplanes, and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes. The MCAI states:

During accomplishment of airworthiness limitations item (ALI) task 531103-01-1 on an aeroplane, a crack was found in an affected area. At the time of the inspection, the affected aeroplane had accumulated 27[, ]340 flight cycles (FC) since first flight, which is significantly below the FC threshold required for that ALI task.

This condition, if not detected and corrected, could affect the structural integrity of FR16 and FR20 of the aeroplane.

To address this potential unsafe condition, Airbus developed a[n optional] modification (cold working), which reinforces the affected area and allows accomplishment of the next inspection at extended threshold. Airbus also revised the threshold for the inspection of the affected area for pre-mod aeroplanes, and published these thresholds in new ALI tasks 531103-01-2 and 531103-01-3. EASA published AD 2017-0231 [which corresponds to FAA AD 2018-25-02, Amendment 39-19513 (83 FR 62690, December 6, 2018) (“AD 2018-25-02”)], requiring, among others, accomplishment of those ALI tasks.

Since that [EASA] AD was issued, it was decided to replace the applicable ALI tasks with the inspection SB [service bulletin] and modification SB. Consequently, both ALI tasks 531103-01-2 and 531103-01-3 will be deleted at the next opportunity of the applicable Airbus airworthiness limitations section document for the aircraft models affected by this [EASA] AD.

For the reason stated above, this [EASA] AD requires repetitive [rototest] inspections of the affected areas and, depending on findings, accomplishment of applicable corrective action(s). This [EASA] AD also includes reference to the applicable [optional] modification SB which provides an optional terminating action for the repetitive inspections [which includes a visual inspection of the intercostal fitting and frame web for damage (including corrosion) and corrective action if necessary] required by this [EASA] AD, or allows deferral of the next inspection, depending on the timing of modification embodiment.

#### Related IBR Material Under 1 CFR Part 51

EASA AD 2018-0289 describes procedures for repetitive rototest inspections of the holes at the door stop fittings for any cracking, and corrective actions if necessary. This material 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, and it is publicly available through the EASA website.

#### FAA’s Determination and Requirements of This Proposed AD

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

#### Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2018-0289 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

#### Explanation of Required Compliance Information

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2018-0289 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2018-0289, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2018-0289 that is required for compliance with EASA AD 2018-0289 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA-2019-0254 after the FAA final rule is published.

#### Clarification of Compliance Time Date

Table 1 of EASA AD 2018-0289 refers to a compliance time “after 31 May 2017,” which EASA stated is the

“reference date for the compliance time included in ALS Part 2 rev. 6.” However, this AD requires using a compliance time after May 31, 2018 (which is the effective date of task

531103-01-1 in “ALS Part 2 rev. 6”). This clarification has been coordinated with EASA.

**Costs of Compliance**

We estimate that this proposed AD affects 1,229 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
33 work-hours × \$85 per hour = \$2,805 .....	\$0	\$2,805	\$3,447,345

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 this on-condition action:

**ESTIMATED COSTS FOR ON-CONDITION ACTIONS**

Labor cost	Parts cost	Cost per product
51 work-hours × \$85 per hour = \$4,335 .....	\$350	\$4,685

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

**Authority for This Rulemaking**

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

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this proposed regulation:

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**Airbus SAS:** Docket No. FAA–2019–0254; Product Identifier 2019–NM–011–AD.

**(a) Comments Due Date**

We must receive comments by June 24, 2019.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to the Airbus SAS airplanes specified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2018–0289, dated December 21, 2018 (“EASA AD 2018–0289”).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a report that cracks were detected on frame (FR) 16 and FR 20 web holes and passenger door intercostal fitting holes at the door stop fitting locations. We are issuing this AD to address such cracking, which could adversely affect the structural integrity of the airplane.

**(f) Compliance**

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

**(g) Requirements**

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2018–0289.

**(h) Exceptions to EASA AD 2018–0289**

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2018–0289 refers to its effective date, this AD requires using the effective date of this AD.

(2) The “Remarks” section of EASA AD 2018–0289 does not apply to this AD.

(3) Where Table 1 of EASA AD 2018–0289 refers to a compliance time “after 31 May 2017,” this AD requires using a compliance time after May 31, 2018 (the effective date of task 531103–01–1 in “ALS Part 2 rev. 6”).

**(i) 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 (j)(2) of this AD. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto: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 instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2018–0289 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC 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.

**(j) Related Information**

(1) For information about EASA AD 2018–0289, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu);

Internet

[www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this EASA AD 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. EASA AD 2018–0289 may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA–2019–0254.

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

Issued in Des Moines, Washington, on May 1, 2019.

**Michael Kaszycki**,

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019–09440 Filed 5–7–19; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA–2019–0320; Product Identifier 2019–NM–017–AD]**

**RIN 2120–AA64**

**Airworthiness Directives; Airbus SAS Airplanes**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A330–200 Freighter, –200 and –300 series airplanes; and certain Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. This proposed AD was prompted by a determination that certain wing slat tracks that were inadvertently indicated as eligible for installation on all Model A330 and A340 series airplanes are unable to sustain the ultimate loads relative to the weight variant of certain airplane configurations. This proposed AD would require inspecting any affected part for cracking, and replacing with a serviceable part, as specified in an European Aviation Safety Agency (EASA) AD, which will be incorporated by reference. We are proposing this AD to address the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by June 24, 2019.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax*: 202–493–2251.

- *Mail*: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery*: Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the incorporation by reference (IBR) material described in the “Related IBR material under 1 CFR part 51”

section in **SUPPLEMENTARY INFORMATION**, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu);

internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. You may view this IBR material 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 in the AD docket on the internet at <http://www.regulations.gov>.

**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–2019–0320; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St, Des Moines, WA 98198; telephone and fax: 206–231–3229.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA–2019–0320; Product Identifier 2019–NM–017–AD” at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM 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 NPRM.

**Discussion**

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019-0026, dated February 4, 2019 (“EASA AD 2019-0026”) (also referred to as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for certain Airbus SAS Model A330-200 Freighter, -200 and -300 series airplanes; and certain Airbus SAS Model A340-200, -300, -500, and -600 series airplanes. The MCAI states:

It was recently determined that, since June 2010, the affected parts were inadvertently indicated as eligible for installation on all A330 and A340 aeroplanes in the applicable Illustrated Part Catalogue (IPC), although in fact, those parts are not valid for some aeroplane configurations (weight variants), because they are unable to sustain ultimate load. Investigation demonstrated that affected parts were never delivered as spare part. However, it cannot be excluded that an affected part was removed in-service from an aeroplane and installed on another.

This condition, if not detected and corrected, could lead to slat detachment in flight, possibly resulting in reduced control of the aeroplane.

To address this potential unsafe condition, Airbus published the applicable SB [service bulletin] to provide instructions to identify affected parts, and instructions to inspect [for cracking of] those affected parts found installed.

For the reasons described above, this [EASA] AD requires a one-time detailed (DET) and special detailed inspection (SDI) of the aft lug of each affected part and replacement of each affected part. This [EASA] AD also prohibits installation of affected parts.

**Related IBR Material Under 1 CFR Part 51**

EASA AD 2019-0026 describes procedures for one-time detailed and special detailed (high frequency eddy current) inspections for cracking of the aft lug of each affected wing slat track (including an inspection to first determine if an affected part is installed), and replacing any affected part with a serviceable part. This material 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, and it is publicly available through the EASA website.

**FAA’s Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists

and is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2019-0026 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

**Explanation of Required Compliance Information**

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. As a result, EASA AD 2019-0026 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019-0026, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2019-0026 that is required for compliance with EASA AD 2019-0026 will be available on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0320 after the FAA final rule is published.

**Costs of Compliance**

We estimate that this proposed AD affects 104 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
7 work-hours × \$85 per hour = \$595 .....	\$0	\$595	\$61,880

We estimate the following costs to do any necessary on-condition action 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 this on-condition action:

**ESTIMATED COSTS OF ON-CONDITION ACTION**

Labor cost	Parts cost	Cost per product
8 work-hours × \$85 per hour = \$680 .....	\$0	\$680

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected

individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I,

section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

### List of Subjects in 14 CFR Part 39

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

### The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Airbus SAS:** Docket No. FAA-2019-0320; Product Identifier 2019-NM-017-AD.

#### (a) Comments Due Date

We must receive comments by June 24, 2019.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) of this AD, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2019-0026, dated February 4, 2019 ("EASA AD 2019-0026").

- (1) Airbus SAS Model A330-223F and -243F airplanes.
- (2) Airbus SAS Model A330-201, -202, -203, -223, and -243 airplanes.
- (3) Airbus SAS Model A330-301, -302, -303, -321, -322, -323, -341, -342, and -343 airplanes.
- (4) Airbus SAS Model A340-211, -212, and -213 airplanes.
- (5) Airbus SAS Model A340-311, -312, and -313 airplanes.
- (6) Airbus SAS Model A340-541 and -642 airplanes.

#### (d) Subject

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

#### (e) Reason

This AD was prompted by a determination that certain wing slat tracks that had been inadvertently indicated as eligible for installation on all Model A330 and A340 series airplanes are unable to sustain the ultimate loads relative to the weight variant of certain airplane configurations. We are issuing this AD to address installation of affected parts, which could result in slat detachment in flight and consequent reduced control of the airplane.

#### (f) Compliance

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

#### (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2019-0026.

#### (h) Exceptions to EASA AD 2019-0026

- (1) For purposes of determining compliance with the requirements of this AD:

Where EASA AD 2019-0026 refers to its effective date, this AD requires using the effective date of this AD.

- (2) The "Remarks" section of EASA AD 2019-0026 does not apply to this AD.

#### (i) 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 (j)(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 instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019-0026 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC 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.

#### (j) Related Information

(1) For information about EASA AD 2019-0026, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this EASA AD 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. EASA AD 2019-0026 may be found in the AD docket on the internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2019-0320.

- (2) For more information about this AD, contact Vladimir Ulyanov, Aerospace

Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206-231-3229.

Issued in Des Moines, Washington, on May 1, 2019.

**Michael Kaszycki,**

*Acting Director, System Oversight Division, Aircraft Certification Service.*

[FR Doc. 2019-09442 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 73

[Docket No. FDA-2019-C-1782]

#### CooperVision, Inc.; Filing of Color Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of petition.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by CooperVision, Inc., proposing that the color additive regulations be amended to provide for the safe use of disperse orange 3 methacrylamide to color contact lenses. The color additive is intended to be copolymerized with various monomers to produce colored contact lens materials.

**DATES:** The color additive petition was filed on March 28, 2019.

**ADDRESSES:** For access to the docket to read background documents or 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:** Molly A. Harry, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1075.

**SUPPLEMENTARY INFORMATION:** Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 9C0315), submitted by CooperVision, Inc., 5870 Stoneridge Dr., Suite 1, Pleasanton, CA 94588. The petition proposes to amend the color additive regulations in 21 CFR part 73, *Listing of*

*Color Additives Exempt from Certification*, to provide for the safe use of disperse orange 3 methacrylamide (CAS Reg. No. 58142-15-7; CAS name 2-propenamamide, 2-methyl-N-[4-[2-(4-nitrophenyl)diazenyl]phenyl]-) to color contact lenses. The color additive is intended to be copolymerized with various monomers to produce colored contact lens materials.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(l) because disperse orange 3 methacrylamide is intended for use in contact lenses. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: May 2, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019-09411 Filed 5-7-19; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG-2019-0300]

**RIN 1625-AA08**

#### Special Local Regulations; Festival of Sail Duluth 2019 Parade of Sail, Lake Superior, Duluth, MN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary special local regulation for a designated area of the Duluth Harbor entrance to Superior Bay on Lake Superior during the Festival of Sail 2019 event in Duluth, MN. This action is necessary to provide for the safety of life on these navigable waters around the port of Duluth, MN during a parade of sail event on August 11, 2019. This proposed rulemaking would prohibit persons and vessels from being in the designated region unless authorized by the Captain of the Port Duluth or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0300 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Abbie Lyons, Waterways Management, MSU Duluth, U.S. Coast Guard; telephone 218-725-3818, email [Abbie.E.Lyons@uscg.mil](mailto:Abbie.E.Lyons@uscg.mil).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Table of Abbreviations**

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

##### **II. Background, Purpose, and Legal Basis**

On December 11, 2018, Draw Events LLC notified the Coast Guard that it will be conducting a Parade of Sail from 7 a.m. through 1 p.m. on August 11, 2019, as part of the 2019 Festival of Sail event in Duluth, MN from August 11 through August 13, 2019. Hazards from spectator vessels and the limited maneuverability of the sailing vessels exist. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with the parade of sail would be a safety concern for anyone within the route of the parade.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within the parade route before, during, and immediately after the scheduled event. The legal basis for this proposed rule is the Coast Guard's authority under 46 U.S.C. 70041; 33 CFR 1.05-1.

##### **III. Discussion of Proposed Rule**

The COTP is proposing to establish a special local regulation from 7 a.m. through 1 p.m. on August 11, 2019. The special local regulation would cover all navigable waters encompassed within the following boundaries: Beginning at position 46°46'48.36" N, 092°05'16.44" W, across Duluth Harbor to 46°47'02.76" N, 092°05'17.88" W, turning north toward the Duluth Lift Bridge at to 46°47'19.32" N, 092°04'04.80" W, to 46°46'50.88" N, 092°05'17.88" W, out

the Duluth Harbor Entrance at 46°46'45.12" N, 092°05'35.16" W, then northwest to 46°46'45.12" N, 092°05'39.84" W back to the north Duluth Entrance Light at 46°47'01.32" N, 092°05'51.00" W, through the canal at 46°47'00.60" N, 092°05'52.08" W, then along Minnesota Point at 46°46'51.60" N, 092°05'46.32" W, entering Minnesota Slip at 46°46'39.00" N, 092°06'03.96" W, encompassing the slip from 46°46'32.16" N, 092°05'38.76" W to 46°46'41.52" N, 092°05'36.24" W and back out the slip at 46°46'42.60" N, 092°05'34.44" W and back to the starting position of 46°46'48.36" N, 092°05'16.44" W.

The duration of the zone is intended to protect the safety of vessels and these navigable waters before, during, and immediately after the scheduled 7 a.m. through 1 p.m. Parade of Sail. Only the designated sailing vessels associated with the event are permitted within the zone. No other vessels or persons will be permitted to enter the zone without obtaining permission from the COTP or a designated representative. The COTP or a designated representative may be contacted via VHF Channel 16 or by telephone at (218) 428-9357. The regulatory text proposed appears at the end of this document.

#### IV. Regulatory Analyses

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

##### A. Regulatory Planning and Review

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

This regulatory action determination is based on the availability of the Superior Harbor entrance as an alternate entry into Superior Bay, the short time frame of the special local regulation, and the estimated number of spectator vessels around the Duluth Harbor entrance for the event. We anticipate

that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine Channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

##### B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

##### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

##### D. Federalism and Indian Tribal Governments

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

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

##### E. Unfunded Mandates Reform Act

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

##### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting 6 hours that would prohibit entry within a designated area around the Duluth Harbor entrance. Normally such actions are categorically excluded

from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

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

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS.

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

■ 2. Add § 100.T09-0300 to read as follows:

##### § 100.T09-0300 Special Local Regulations; Festival of Sail Duluth 2019 Parade of Sail, Lake Superior, Duluth, MN.

(a) *Regulated areas.* (1) This Area includes all waters of Lake Superior and Duluth Harbor bounded by Rice's Point to the west and Duluth to the north, within the following boundaries: Beginning at position 46°46'48.36" N, 092°05'16.44" W, across Duluth Harbor to 46°47'02.76" N, 092°05'17.88" W, turning north toward the Duluth Lift Bridge to 46°47'19.32" N, 092°04'04.80" W, to 46°46'50.88" N, 092°05'17.88" W, out the Duluth Harbor Entrance at 46°46'45.12" N, 092°05'35.16" W, then northwest to 46°46'45.12" N, 092°05'39.84" W back to the north Duluth Entrance Light at 46°47'01.32" N, 092°05'51.00" W, through the canal at 46°47'00.60" N, 092°05'52.08" W, then along Minnesota Point at 46°46'51.60" N, 092°05'46.32" W, entering Minnesota Slip at 46°46'39.00" N, 092°06'03.96" W, encompassing the slip from 46°46'32.16" N, 092°05'38.76" W to 46°46'41.52" N, 092°05'36.24" W and back out the slip at 46°46'42.60" N, 092°05'34.44" W and back to the starting position of 46°46'48.36" N, 092°05'16.44" W.

(b) *Special local regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into, transiting, or anchoring within the regulated areas is prohibited unless authorized by the Captain of the Port (COTP) Duluth or on-scene representatives.

(2) Vessels and persons receiving COTP Duluth or on-scene representative authorization to enter the area of this special local regulation must do so in accordance with the following restrictions:

(i) Vessels and persons must transit at a speed not exceed six (6) knots or at no wake speed, whichever is less. Vessels proceeding under sail will not be allowed in this Area unless also propelled by machinery, due to limited maneuvering ability around numerous other spectator craft viewing the Festival of Sail.

(ii) Vessels and persons will not be permitted to impede the parade of sail once it has commenced, as the tall ships are extremely limited in their ability to maneuver.

(3) The Coast Guard will provide notice of the regulated area prior to the event through Local Notice to Mariners and Broadcast Notice to Mariners. Notice will also be provided by on-scene representatives.

(4) The "on-scene representative" of the COTP Duluth is any Coast Guard commissioned, warrant, or petty officer and any Federal, State, or local officer designated by the COTP to act on his or her behalf.

(5) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP Duluth by telephone at (218) 428-9357, or on-scene representative via VHF radio on Channel 16, to obtain permission to do so. Vessel operators given permission to enter, operate, transit through, anchor in, or remain within the regulated areas must comply with all instructions given by COTP Duluth or on-scene representatives.

(c) *Effective date.* These regulations are effective Sunday, August 11, 2019; from 7 a.m. through 1 p.m.

Dated: May 2, 2019.

**E. E. Williams,**

*Commander, U.S. Coast Guard, Captain of the Port Duluth.*

[FR Doc. 2019-09421 Filed 5-7-19; 8:45 am]

**BILLING CODE 9110-04-P**

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Chapter I

[EPA-HQ-OPPT-2019-0038; FRL-9992-67]

#### TSCA Section 21 Petition To Initiate a Reporting Rule Under TSCA Section 8(a) for Asbestos; Reasons for Agency Response

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

**ACTION:** Petition for rulemaking; denial.

**SUMMARY:** This document provides the reasons for EPA's response to a January 31, 2019, petition it received under section 21 of the Toxic Substances Control Act (TSCA) from the Attorneys General of Massachusetts, California, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia ("petitioners"). Generally, the petitioners requested that EPA initiate a rulemaking proceeding under TSCA section 8(a) for the reporting of the manufacture (including import) and processing 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 April 30, 2019.

**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](mailto: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](mailto: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 (which includes import) or process or may manufacture or process the chemical asbestos (general 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-2019-0038, 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 5(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 within 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), the section under which petitioners request the EPA to act here, 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, such as the Chemical Data Reporting (CDR) rule at 40 CFR part 711, which covers asbestos.

**III. Summary of the TSCA Section 21 Petition**

*A. What action was requested?*

On January 31, 2019, the Attorneys General of Massachusetts, California, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia (petitioners) petitioned EPA to initiate a rulemaking proceeding under TSCA section 8(a) for the reporting of the manufacture, import, and processing of asbestos (Ref. 1).

The petitioners requested specific TSCA section 8(a) reporting requirements for asbestos in order to collect information for the ongoing asbestos risk evaluation being conducted under TSCA section 6(b), which is to be completed by December 22, 2019 (15 U.S.C. 2605(b)(4)(G)(i)) and no later than June 22, 2020 if EPA

exercises a six-month extension (15 U.S.C. 2605(b)(4)(G)(ii)), and, if necessary, for any subsequent risk management decisions under TSCA section 6(a). The petitioners specifically requested that EPA:

- Eliminate any applicability of the "naturally occurring substance" (NOCS) exemption in the CDR for asbestos reporting;
- Apply the CDR reporting requirements to processors of asbestos, as well as manufacturers (including importers) of the chemical substance;
- Eliminate any applicability of the impurities exemption in the CDR for asbestos reporting; and
- Eliminate any applicability of the articles exemption in the CDR with respect to imported articles that contain asbestos.

*B. What support do the petitioners offer?*

The petitioners request that EPA initiate a rulemaking proceeding under TSCA section 8(a) "to address infirmities in asbestos reporting" under EPA's CDR rule at 40 CFR 711. In support of their request, the petitioners state that "[r]obust reporting of the importation and use of asbestos in the U.S. is necessary for EPA to satisfy its statutory mandate under TSCA section 6(a) to establish requirements to ensure that asbestos does not present an unreasonable risk of injury to health or the environment and for states and the public to have access to data necessary to themselves evaluate such risks" (Ref. 1).

The petitioners present their views as to EPA's need for "comprehensive data with respect to the manufacture (including import) and use of asbestos in the U.S." when conducting the asbestos risk evaluation and undertaking any potential subsequent risk management actions. The petitioners conclude that such data are not being collected under the current CDR rule. Several times in their request, the petitioners cite EPA's response to a previous petition filed under TSCA section 21 by the Asbestos Disease Awareness Organization (ADAO) and five other non-governmental organizations. In that petition, which EPA received on September 27, 2018, ADAO and others requested that EPA initiate rulemaking proceedings under TSCA section 8(a) to amend the CDR rule to increase reporting of asbestos to CDR (Ref. 2). EPA denied the petition on December 21, 2018, on the grounds that the petitioners did not demonstrate that it is necessary to amend the CDR rule (84 FR 3396, February 12, 2019) (FRL-9988-56). The petition from ADAO et al. and EPA's response are in Docket ID

No. EPA-HQ-OPPT-2018-0682 at <https://www.regulations.gov>.

The CDR rule, which is one of several reporting rules promulgated under TSCA section 8(a), 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, actions taken under TSCA section 6.

While asbestos is already required to be reported under the CDR rule by manufacturers (including importers) meeting certain criteria, the petitioners point out that CDR exempts from reporting chemicals, like asbestos, that are naturally occurring chemical substances, present as an impurity, or incorporated into an article. Additionally, the petitioners note that CDR does not require reporting from processors of chemical substances.

The petitioners assert that “[a]ny TSCA risk evaluation that EPA conducts without access to accurate and complete asbestos data cannot satisfy TSCA’s risk evaluation criteria, including TSCA’s requirement that EPA use the ‘best available science’ in carrying out TSCA’s mandate to eliminate unreasonable risk of injury to health or the environment presented by the manufacture (including importation), processing, distribution in commerce, use, or disposal of a toxic chemical substance” (Ref. 1).

Petitioners contend that the requested action under TSCA section 8(a) “would enable EPA to present and rely on a complete set of domestic data about the amount, and uses, of asbestos, is consistent with those goals and with the statute’s requirements” (Ref. 1).

In their request, the petitioners state that “[a]sbestos is a known human carcinogen and there is no safe level of exposure to this highly toxic material ubiquitous in our built environment” (Ref. 1). The petitioners cite research finding dangers from asbestos and provide a review of asbestos assessments and regulations under federal and state law.

In their petition, they state that in 1989, EPA concluded that “asbestos is a highly potent carcinogen regardless of the type of asbestos or the size of the fiber” and assert that “EPA has long possessed an abundance of information that supports aggressive regulatory actions to protect the public from asbestos disease risks” (Ref. 1).

The petitioners restate their belief that EPA has “chos[en] to put on blinders and ignore some of the most meaningful data with respect to risks of exposure to the chemical substance” (Ref. 1), a view which many of the petitioning Attorneys General first expressed in comments on EPA’s Problem Formulation of the Risk Evaluation for Asbestos (83 FR 26998, June 11, 2018) (FRL-9978-40). Moreover, the petitioners cite language in the Problem Formulation that states that “import volumes of products containing asbestos is [sic] unknown” (Ref 1). The petitioners assert that EPA’s response to the ADAO Petition directly contradicts what EPA stated in the Problem Formulation.

#### **IV. Background Considerations: 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, existing TSCA section 8(a) rules including the CDR rule, general exemptions for TSCA section 8(a) rules, and past reporting of asbestos under TSCA section 8(a). These details are explained in the following units.

##### *A. Risk Evaluation of Asbestos*

On June 22, 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. 114-182) amended TSCA (15 U.S.C. 2601 *et seq.*). The new law includes statutory requirements mandating that EPA conduct risk evaluations for existing chemicals. On December 19, 2016 (81 FR 91927) (FRL-9956-47), EPA designated asbestos as one of the first 10 chemical substances subject to the Agency’s initial chemical risk evaluations 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 in chemical manufacturing where extremely high temperatures are needed; brake blocks for oil drilling; aftermarket automotive brakes/linings; other vehicle friction products; and

other gaskets (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 ID No. EPA-HQ-OPPT-2016-0736). EPA’s review of these data sources served as the basis for the conditions of use of asbestos. 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 ID No. 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 (83 FR 26922; FRL-9978-76), EPA proposed a significant new use rule (SNUR) under TSCA section 5, 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 products) and specifically 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 ID No. EPA-HQ-OPPT-2018-0159).

In the Asbestos Problem Formulation document, based on the aforementioned outreach and research, EPA did not identify any conditions of use of

asbestos as an impurity. In EPA's Asbestos Problem Formulation for the Risk Evaluation (Ref. 3), the Agency identified the conditions of use as imported raw bulk chrysotile asbestos for the fabrication of diaphragms for use in chlorine and sodium hydroxide production; and several imported chrysotile asbestos-containing materials, including sheet gaskets; brake blocks for oil drilling, aftermarket automotive brakes, linings, and other vehicle friction products; and other gaskets.

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 section 26 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, the deadline that Congress set in TSCA. EPA acknowledges the statute provides that EPA may extend the deadline to complete a risk evaluation by six months (15 U.S.C. 2605(b)(4)(G)(iii)). As discussed in Unit V.A., even if EPA were to exercise this extension authority in the case of the ongoing asbestos risk evaluation, that would not affect the Agency's reasons for denying this petition.

#### *B. TSCA Section 5(a) SNUR and Asbestos*

On April 17, 2019, EPA signed the SNUR for asbestos and asbestos-containing products (84 FR 17345, April 25, 2019; FRL-9991-33). Section 5(a)(2) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, authorizes EPA to determine that a use of a chemical substance is a "significant new use." Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture (including import) or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)(i)). TSCA prohibits the manufacturing (including importing) or processing from commencing until EPA has conducted a review of the notice, made an appropriate determination on

the notice, and taken such actions as are required in association with that determination (15 U.S.C. 2604(a)(1)(B)(ii)). Those actions could include a prohibition on a use of that chemical substance.

For that SNUR, the significant new use of asbestos is manufacturing (including importing) or processing for uses that are neither ongoing nor already prohibited under TSCA. The following uses are subject to the SNUR: Adhesives, sealants, and roof and non-roof coatings; arc chutes; beater-add gaskets; cement products; extruded sealant tape and other tape; filler for acetylene cylinders; friction materials (with certain exceptions); high-grade electrical paper; millboard; missile liner; packings; pipeline wrap; reinforced plastics; roofing felt; separators in fuel cells and batteries; vinyl-asbestos floor tile; woven products; any other building material; and any other use of asbestos that is neither ongoing nor already prohibited under TSCA.

The asbestos SNUR prohibits these discontinued uses of asbestos from restarting without EPA having an opportunity to evaluate each intended use (*i.e.*, significant new use) for potential risks to health and the environment and take any necessary regulatory action, which may include a prohibition. The SNUR ensures that the conditions of use that are in the scope of the risk evaluation and not subject to the SNUR are the only ongoing uses of asbestos and asbestos-containing products in the United States.

#### *C. TSCA Section 8(a) Rules*

Section 8(a)(1) of TSCA authorizes the EPA Administrator to promulgate rules under which manufacturers 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. The Agency is prohibited by TSCA section 8(a)(5)(A) from requiring reporting that is "unnecessary or duplicative" and must apply the reporting obligations under TSCA section 8(a) to those persons who are likely to have the relevant information. 15 U.S.C. 2607(a)(5).

EPA has promulgated several data reporting rules under TSCA section 8(a); the CDR rule is the largest data collection rule, in terms of the number of entities subject to reporting under the rule.

The CDR rule requires U.S. manufacturers (including importers) of chemicals on the TSCA Chemical Substance 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)). 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 (2,500 pounds) 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). Asbestos is subject to the lower production volume reporting threshold of 2,500 pounds; thus, manufacturers and importers of asbestos are required to report asbestos under the CDR rule unless they qualify for an exemption.

#### *D. Exemptions From Reporting Under the TSCA Section 8(a) Rules*

EPA has specified general reporting and recordkeeping provisions for TSCA section 8(a) information gathering rules at 40 CFR 704 and has promulgated general exemptions to reporting at 40 CFR 704.5 using the Agency's broad discretion in TSCA section 8(a) to fashion reporting schemes "as the Administrator may reasonably require." (15 U.S.C. 2607(a)(1)(A)). However, also utilizing this discretion, EPA can revise, remove, or add to these exemptions. The exemptions at 40 CFR 704.5 are for articles, byproducts, impurities, non-isolated intermediates, research and development, and small manufacturers and importers.

If the chemical substance is imported solely as part of an article, the chemical substance is generally exempt from being reported under TSCA section 8(a). 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."

Impurities are also generally exempt from reporting under rules promulgated pursuant to TSCA section 8(a). 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.

The exemption from reporting naturally occurring chemical substances under the CDR rule, found at 40 CFR 711.6(b), is one example of an exemption that has been added to TSCA section 8(a) reporting requirements under EPA's broad discretion to fashion reporting schemes "as the Administrator may reasonably require".

While TSCA section 8(a) provides EPA with the authority to collect information from processors, EPA has used its discretion to not require processors to 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).

#### *E. Recent Asbestos Reporting Under TSCA Section 8(a)*

Two companies, both from the chloro-alkali industry, reported importing raw asbestos during the 2016 CDR reporting cycle (Ref. 4) and did not claim the exemption for naturally occurring chemical substances. Both companies claimed their reports as confidential business information. Because asbestos has not been mined or otherwise produced in the United States since 2002 (Ref. 5), all raw asbestos currently in commerce 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 State of California (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.

EPA agrees that knowledge of which entities are importing and using asbestos and asbestos-containing products, where and how these activities occur, and the quantities of asbestos involved is important for identifying exposed populations, and

characterizing pathways of exposure. EPA already has this information, which it has obtained through reporting, voluntary submission, and modeling. EPA has used information currently reported under the CDR rule and other sources of data to identify and characterize the conditions of use for asbestos, and is using this information as part of the ongoing risk evaluation for asbestos under TSCA section 6(b).

EPA does not believe that petitioners have demonstrated that it is necessary to initiate a rulemaking proceeding under TSCA section 8(a) to obtain additional information in order to conduct its risk evaluation on asbestos and any potential subsequent risk management. While the petitioners assert that EPA's response to the ADAO Petition directly contradicts what EPA stated in the Problem Formulation regarding EPA's acknowledgement of a lack of certain data, EPA disagrees. EPA believes that the Agency is aware of all ongoing uses of asbestos and already has the essential information that EPA would receive if EPA were to grant the petition. Since asbestos was announced in December 2016 as one of the first ten chemicals for evaluation under TSCA, the Agency has conducted market research, public outreach, voluntary data collection, collaborative work with other Federal and State agencies, and stakeholder engagement. Given EPA's understanding of asbestos and reporting under TSCA section 8(a), as a result of implementation of the CDR rule and other TSCA section 8(a) rules, EPA does not believe that the requested reporting requirements would collect the data the petitioners believe the Agency lacks. Where EPA lacks information, the Agency has relied on models. This use of modeled data is in line with EPA's final Risk Evaluation Rule (Ref. 7) and EPA's risk assessment guidelines. Furthermore, EPA will provide opportunity for peer and public review of the draft Asbestos Risk Evaluation, which EPA will use to refine the risk evaluation of asbestos.

Further, even if EPA believed that the requested reporting requirements would collect new and useful information, EPA would not complete the rulemaking proceeding in time to collect data to inform the ongoing risk evaluation. The petitioners' request does not factor in the necessary timeframes for any rulemaking proceeding 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 the risk promulgation, amendment, or repeal of a rule. EPA would then need to provide time for implementation, data collection, and data review prior to making use of the reported information. EPA intends to finalize the risk evaluation for asbestos in December 2019, but EPA notes that it has statutory authority to extend that deadline by up to six months. If EPA finds unreasonable risk for a condition of use, risk management must promptly be initiated with a proposed rule issued one year after EPA makes such a determination.

While it is possible that the requested rulemaking proceeding itself could be completed prior to any potential subsequent risk management decision(s) being finalized, EPA does not believe that the requested section 8(a) reporting requirements on asbestos would collect information useful for any necessary risk management, for the reasons explained in Unit V.B. Given the statutorily required timing for finalizing the asbestos risk evaluation and initiating risk management, if unreasonable risk exists for a condition of use, the requested TSCA section 8(a) reporting requirements on asbestos would not provide timely or useful information to inform either the ongoing asbestos risk evaluation or any potential subsequent risk management action. EPA believes that this would still be the case even were it to exercise its statutory authority to extend the deadline to complete the asbestos risk evaluation for six months, because the requested section 8(a) reporting requirements would likely not collect that would further inform the risk evaluation beyond the information EPA already has, as explained in Unit V.B.

#### *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 initiate rulemaking proceedings under TSCA section 8(a) for the reporting of the manufacture, import, and processing of asbestos.

##### **1. Eliminate Exemption for Naturally Occurring Chemical Substances for Asbestos**

*a. Petitioners' request.* The petitioners ask that the requested TSCA section 8(a) reporting requirements for asbestos remove any exemption for naturally occurring chemical substances. The petitioners state that the import of raw asbestos represents "pathways of

exposure that present risks to health and the environment that EPA must consider in conducting its risk evaluation and regulating asbestos” (Ref. 1). In support of this request, the petitioners question EPA’s prior assertion that the Agency has sufficient information about asbestos use and exposure, as obtained through CDR and other “voluntary disclosures” (Ref. 1). The petitioners believe that EPA contradicted itself in that in the response to the earlier ADAO petition the Agency stated it has sufficient information for the risk evaluation, while in the Problem Formulation EPA said “[i]t is important to note that the import volumes of products containing asbestos is [sic] unknown” (Ref. 1).

b. *Agency response.* Raw asbestos is the only type of asbestos to which the naturally occurring substance exemption could apply. As defined by the CDR-specific rules in 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)). Articles containing asbestos would not be considered a naturally occurring chemical substance, given the processing required to create the article.

EPA does not believe that the requested elimination of the exemption for naturally occurring chemical substances would result in the reporting of any information that is not already known to EPA, for several reasons. EPA’s understanding is that the chloro-alkali industry is the only importer of raw bulk asbestos, and the Agency has sufficient volume, import, use, and hazard data from that industry to conduct the risk evaluation. EPA has no

reason to believe there are other importers of raw asbestos. Raw asbestos generally refers to asbestos as a naturally occurring chemical substance. Implementing TSCA section 8(a) asbestos reporting requirements for manufacturers (including importers) of asbestos as a naturally occurring chemical substance, therefore, would not provide any additional useful or timely information to EPA on the use of raw asbestos.

Because the purpose of domestic manufacturing or importing of raw asbestos is to make asbestos diaphragms, for which EPA already has use and exposure information, the request to require 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.), and the Agency is prohibited by TSCA section 8(a)(5)(A) from requiring reporting that is unnecessary or duplicative.

EPA disagrees that there is a contradiction between what EPA stated in the Asbestos Problem Formulation and what EPA stated in the petition response to ADAO. While EPA did state in the problem formulation that the imported volumes of products containing asbestos are unknown, the requested reporting of naturally occurring substances would not provide imported volumes of products containing asbestos, given that articles are not considered naturally occurring substances. As used in the asbestos Problem Formulation, the term “products containing asbestos” refers to asbestos articles. For more information on the data availability and evaluation of asbestos in articles, see Unit V.B.iii. for EPA’s response to the request for reporting of imported asbestos articles.

EPA finds that petitioners have failed to set forth sufficient facts to establish that it is necessary for the Agency to use its discretion to no longer exempt naturally occurring asbestos from reporting requirements under TSCA section 8(a).

## 2. Apply the CDR Reporting Requirements to Processors of Asbestos

a. *Petitioners’ request.* The petitioners note that EPA has the authority to require that processors report under TSCA section 8(a), but EPA does not require processors to report to CDR. The petitioners believe a rulemaking proceeding to subject CDR reporting requirements on the processing of asbestos is needed in order “to enable EPA to carry out its responsibility to impose requirements on processors to

eliminate unreasonable risks of injury to health or the environment arising from exposures to asbestos” (Ref. 1). In support of their request, the petitioners cite the U.S. Geological Survey (USGS) Minerals Yearbook for 2016 (Ref. 5) and state that “U.S. firms exported and reexported \$35.4 million of manufactured asbestos products in 2016, including asbestos based friction products like brake linings, clutch linings, and disk pads, and gaskets, packing, and seals, in the amount of 2,710 metric tons” (Ref.1).

b. *Agency response.* EPA knows of 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 sheets. Information on these uses is well understood by EPA as a result of direct communication with these processors (see Problem Formulation of the Risk Evaluation for Asbestos (Ref. 3, pg. 25)).

To support a claim that there is ongoing processing of articles that EPA is unaware of, the petitioners cite the export and reexport of articles described in the USGS Minerals Yearbook for 2016 (Ref. 5). The petitioners, however, neglect to note that the same report states that these shipments were likely misclassified and that “[s]hipments reported under these categories may have been reexports and (or) exports of products that were similar but did not contain asbestos.” In identifying the conditions of use for asbestos during the TSCA risk evaluation process, EPA reviewed the U.S. International Trade Commission’s Dataweb and other government and commercial trade databases. EPA was unable to confirm any processing of asbestos beyond processing of raw asbestos into diaphragms and the fabrication of gaskets from imported asbestos-containing sheets.

Since asbestos is not mined in the United States, raw asbestos is imported solely by the chlor-alkali industry; because sheet gaskets are the only imported asbestos-containing products that may involve processing, EPA does not believe there are additional, unknown processors of asbestos in the United States. Accordingly, EPA does not believe that requiring reporting from processors of asbestos under TSCA section 8(a) 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 section 8(a) and the Agency is prohibited by TSCA section 8(a)(5)(A) from requiring

reporting that is unnecessary or duplicative. Therefore, EPA finds that petitioners have failed to set forth sufficient facts to establish that it is necessary for the Agency to use its discretion to require TSCA section 8(a) reporting for processors of asbestos.

### 3. Eliminate Exemption for Reporting of Imported Articles Containing Asbestos

a. *Petitioners' request.* In support of their request to eliminate the reporting exemption for imported articles containing asbestos, the petitioners state that "the Asbestos Problem Formulation provides virtually no information about the amount of asbestos in any of these products, the quantities in which they may be imported, and where they may be used, let alone any information about the extent to which the public may be exposed to these asbestos-containing products" (Ref. 1). Furthermore, the petitioners state that "EPA simply throws up its hands, stating that '[c]onsumer exposures will be difficult to evaluate since the quantities of these products that still might be imported into the United States is not known'" (Ref. 1).

b. *Agency response.* EPA has relied on extensive outreach and research to determine the conditions of use of asbestos (as described in Unit IV.A.). The Agency does not believe that requiring TSCA section 8(a) reporting on imported articles for asbestos would be helpful in collecting additional import information on asbestos-containing articles because the Agency has identified the articles that are imported into the United States and promulgated a significant new use rule under TSCA section 5 to require notification to the Agency of any new uses, including different or new articles. The Agency is prohibited by TSCA section 8(a)(5)(A) from requiring reporting that is unnecessary or duplicative. Even if EPA were to require reporting on imported articles for asbestos, EPA does not believe that potentially useful information for EPA's ongoing asbestos risk evaluation would be "reasonably ascertainable" by importers and thus EPA could not require this information to be reported under TSCA section 8(a). Nor would EPA be able to collect new data in time to inform the risk evaluation, which EPA intends to complete in December 2019. EPA, however, acknowledges the statute provides that EPA may extend the deadline to complete a risk evaluation by six months (15 U.S.C. 2605(b)(4)(G)(ii)). As discussed in Unit V.A., even if EPA were to exercise this extension authority in the case of the ongoing asbestos risk evaluation, that

would not affect the Agency's reasons for denying this petition. If EPA finds unreasonable risk for a condition of use, risk management must promptly be initiated with a proposed rule issued one year after EPA makes such a determination.

EPA has sufficient information on imported articles containing asbestos to conduct the risk evaluation and inform any potential risk management decisions based on the risk determination. The only asbestos-containing articles that EPA has identified that are currently imported into the United States are asbestos-containing sheet gaskets, other gaskets, aftermarket automotive brakes/linings, other vehicle friction products, and brake blocks. Furthermore, the final Asbestos SNUR, published on April 25, 2019, ensures that no significant new uses of asbestos, including as an article, can begin without EPA first evaluating the significant new use and then, if necessary, taking action to prohibit or limit the activity.

The petitioners state that EPA lacks information on the quantity of asbestos contained in articles and assert that the Agency "lack[s] this information despite" communication with Chemours, a company that uses asbestos-containing gaskets, and Branham Corporation, the gasket supplier to Chemours (Ref. 1). Yet, as stated in the Asbestos Problem Formulation, Chemours notified EPA of their current use of imported gaskets from China (Comment identified by Document ID No. EPA-HQ-OPPT-2016-0736-0067). Chemours stated that these sheet gaskets are composed of 80% (minimum) chrysotile asbestos, encapsulated in Styrene Butadiene Rubber, and used to create tight chemical containment seals during the production of titanium dioxide. Furthermore, as stated in the Asbestos Problem Formulation, on October 30, 2017, EPA met with Chemours and Branham Corporation, who provided EPA with additional information on the fabrication and use of the gaskets (Ref. 3).

Similarly, the petitioners stated that EPA lacks information on asbestos-containing brake blocks, even though a domestic brake block manufacturer confirmed the continued import of these products (Ref. 1). However, EPA believes that it is able to conduct scientifically rigorous risk evaluations even without the information to which petitioners refer. For the asbestos risk evaluation, in instances where the specific use information on asbestos is unknown, EPA has made use of best available science. EPA's assumptions,

uncertainty factors, and models or screening methodologies used when assessing risks associated with the conditions of use of asbestos-containing articles will be peer and publicly reviewed. It is standard practice for EPA to make conservative assumptions in the absence of complete information. Considering the extensive outreach and research conducted since December 2016, EPA has no reason to believe there are ongoing imports of articles containing asbestos that are unknown to EPA.

Additionally, information reported under TSCA section 8(a) is limited to that which is "known to or reasonably ascertainable" by the reporter. Thus, even if EPA were to require the reporting of asbestos-containing articles under TSCA section 8(a), importers would rely on information readily available to them, such as Safety Data Sheets or other documentation provided by their foreign supplier. As a result, EPA does not believe that the requested reporting requirement 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. Requiring importers of asbestos-containing articles to report under TSCA section 8(a), therefore, would not provide any new use information that would inform the ongoing risk evaluation or any subsequent risk management decisions, if needed, and the Agency is prohibited by TSCA section 8(a)(5)(A) from requiring reporting that is unnecessary or duplicative.

For these reasons, EPA believes that the petitioners have failed to set forth sufficient facts to establish that it is necessary for the Agency to use its discretion to require reporting from importers of asbestos-containing articles under section 8(a).

### 4. Eliminate Impurities Exemption for Asbestos.

a. *Petitioners' request.* In support of their request eliminate the impurities exemption for asbestos, the petitioners state that "contamination of talc with asbestos is well-known, having been discovered as impurities in cosmetics, baby powder, and crayons" (Ref. 1). As such, the petitioners assert that the "presence of asbestos in such consumer products, whether unintentional 'impurities' or as an unintended ingredient in the article, dictates that these exemptions cannot apply with respect to the reporting requirements for asbestos in commerce" (Ref. 1).

*b. Agency response.* Even if EPA were to eliminate the impurities exemption for asbestos, it is unlikely that requiring this reporting would yield any new information because rules under TSCA section 8(a) do not require submitters to perform chemical analyses of products containing the chemicals they manufacture. Instead, the standard for all information required to be reported under TSCA section 8(a)(2) is that it be “known or reasonably ascertainable.” EPA is aware that testing by a small number of importers of talc or products such as crayons has shown that some of these products are contaminated with asbestos as an impurity. However, EPA cannot compel importers who have not tested their imports to conduct this kind of testing under TSCA section 8(a). EPA can only compel reporting of testing information that is known or reasonably ascertainable to the reporter. While the petitioners “believe that it is reasonable to expect that importers of talc [ . . . will . . . ] test it for asbestos and that the results of such testing constitute ‘reasonably ascertainable’ information for reporting purposes” (Ref. 1), the petitioners provide no support for the belief that importers are testing for asbestos. EPA is not aware of routine testing of imports for impurities of asbestos. 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 issuing the requested TSCA section 8(a) reporting requirements would result in reporting of asbestos as an impurity, to the extent that the presence of asbestos as an impurity in these articles generally is not known or reasonably ascertainable to the importer. EPA finds that the petitioners have failed to set forth sufficient facts to establish that it is necessary for the Agency to use its discretion to require manufacturers (including importers) of asbestos as an impurity to report under section 8(a).

#### 5. Enable EPA To Satisfy Requirements for Best Available Science

*a. Petitioners’ request.* As overall support for their petition, the petitioners state that EPA must grant their request to satisfy its statutory obligation under TSCA section 26 to consider the information “reasonably available” to it. Additionally, since the petitioners believe that if EPA were to require reporting on asbestos as a naturally occurring chemical substance, asbestos-containing articles, asbestos as an impurity, and from asbestos processors, that this data is “reasonably available to the agency” and thus “needed for EPA

to be able to make informed technically complex decisions regarding the regulation of asbestos” (Ref. 1).

*b. Agency response.* TSCA section 26 requires that, to the extent that EPA makes a decision based on science under TSCA sections 4, 5, or 6, EPA must use scientific standards and base those decisions on the best available science and on the weight of the scientific evidence. 15 U.S.C. 2625(h) and (i). In the final Risk Evaluation Rule (Ref. 7), EPA defined “best available science” as science that is reliable and unbiased. This involves the use of supporting studies conducted in accordance with sound and objective science practices, including, when available, peer reviewed science and supporting studies and data collected by accepted methods or best available methods (if the reliability of the method and the nature of the decision justifies use of the data).

Additionally, in the final Risk Evaluation Rule, EPA defined weight of scientific evidence as a systematic review method, applied in a manner suited to the nature of the evidence or decision, that uses a pre-established protocol to comprehensively, objectively, transparently, and consistently, identify and evaluate each stream of evidence, including strengths, limitations, and relevance of each study and to integrate evidence as necessary and appropriate based upon strengths, limitations, and relevance (Ref. 7 at pg. 33733). EPA sees weight of the scientific evidence approach as an interrelated part of systematic review, and further believes that integrating systematic review into the TSCA risk evaluations is critical to meet the statutory requirements of TSCA.

TSCA section 26(k) (15 U.S.C. 2625(k)) states that in carrying out risk evaluations, EPA shall consider information that is “reasonably available,” but the statute does not further define this phrase. In the final Risk Evaluation Rule (Ref. 7), EPA defined “reasonably available information” to mean information that EPA possesses, or can reasonably obtain and synthesize for use in risk evaluations, considering the deadlines for completing the evaluation. While EPA prefers high quality data, where available, EPA recognized in the Risk Evaluation Rule that data is not always necessary to reach a scientifically grounded conclusion on the potential risks of a chemical substance, within the timeframes dictated by the statute (Ref. 7 at pg. 33739).

As outlined in the previous units, EPA does not believe that the requested asbestos reporting requirements would

collect information that is either new or useful in informing the ongoing asbestos risk evaluation. EPA believes that it already has sufficient information to conduct the risk evaluation. Moreover, even if EPA were to initiate the requested action, EPA would not collect information in a timely manner to inform the ongoing risk evaluation nor any potentially subsequent risk management activities, if unreasonable risk for the asbestos uses being evaluated is determined. EPA intends to finalize the risk evaluation for asbestos no later than December 2019, EPA acknowledges the statute provides that EPA may extend the deadline to complete a risk evaluation by six months (15 U.S.C. 2605(b)(4)(G)(ii)). As discussed in Unit V.A., even if EPA were to exercise this extension authority in the case of the ongoing asbestos risk evaluation, that would not affect the Agency’s reasons for denying this petition. If EPA finds unreasonable risk for a condition of use, risk management must promptly be initiated with a proposed rule issued one year after EPA makes such a determination.

Thus, EPA finds that the petitioners have failed to set forth sufficient facts to establish that it is necessary to grant their request in order to meet its obligations under TSCA section 26 to make its decision under TSCA section 6 based on the weight of the scientific evidence, using reasonably available information, and using the best available science.

#### VI. 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. The Attorneys General of Massachusetts, California, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia to Andrew Wheeler, Acting Administrator, U.S. Environmental Protection Agency. Re: Petition of the Commonwealths of Massachusetts and Pennsylvania, the States of California, Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia under Section 21(a) of TSCA, 15 U.S.C. 2620(a), for EPA to

- Issue an Asbestos Reporting Rule to Require Reporting under TSCA Section 8(a), 15 U.S.C. 2607(a), of Information Necessary for EPA to Administer TSCA as to the Manufacture (including Importation), Processing, Distribution in Commerce, Use, and Disposal of Asbestos. Received January 31, 2019.
2. 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.
  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](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 Initiate Rulemaking Under Section 8(a) of TSCA for the Reporting of the Manufacture, Import, and Processing of Asbestos. Letter. 2019.
  7. EPA. Final Rule; Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act. **Federal Register**. 82 FR 33726, July 20, 2017 (FRL-9963-38).

### List of Subjects in 40 CFR Chapter I

Environmental protection, Asbestos, Flame retardants, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 30, 2019.

**Alexandra Dapolito Dunn,**

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

[FR Doc. 2019-09335 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2018-0042; FRL-9993-30-Region 3]

### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve portions of a state implementation plan (SIP) submission from Maryland for the 2010 sulfur dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS or standard). Whenever EPA promulgates a new or revised NAAQS, states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet the requirements of the new or revised NAAQS, or to add any needed provisions necessary to meet the revised NAAQS. These SIP submissions are commonly referred to as “infrastructure” SIPs. The infrastructure requirements are designed to ensure that the structural components of each state’s air quality management program are adequate to meet the state’s responsibilities under the Clean Air Act (CAA). EPA is proposing to approve Maryland’s submittal addressing certain infrastructure requirements for the 2010 SO<sub>2</sub> NAAQS in accordance with the requirements of section 110 of the CAA, with the exception of the portion of the submittal pertaining to interstate transport.

**DATES:** Written comments must be received on or before June 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2018-0042 at <https://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at [Regulations.gov](http://Regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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:

Marilyn Powers, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2308. Ms. Powers can also be reached via electronic mail at [powers.marilyn@epa.gov](mailto:powers.marilyn@epa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Background

On June 22, 2010 (75 FR 35520), EPA promulgated a revised NAAQS for SO<sub>2</sub> at a level of 75 part per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1), states must submit “within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),” a plan that provides for the “implementation, maintenance, and enforcement” of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA’s taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that “[e]ach such plan” submission must address to meet the infrastructure requirements.

#### II. Summary of SIP Revision and EPA Analysis

On August 17, 2016, Maryland, through the Maryland Department of the Environment (MDE) formally submitted a SIP revision to satisfy the infrastructure requirements of section 110(a) of the CAA for the 2010 SO<sub>2</sub> NAAQS. The SIP submittal addressed the following infrastructure elements for the 2010 SO<sub>2</sub> NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(I), (D)(i)(II),

D(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Based on EPA guidance issued on September 13, 2013 (2013 Infrastructure Guidance),<sup>1</sup> Maryland's infrastructure SIP submittal did not address the following two elements of CAA section 110(a)(2): The portion of section 110(a)(2)(C) pertaining to permit programs, known as nonattainment new source review (NNSR), under part D, title I of the CAA, and section 110(a)(2)(I), referred to as "element (I)," also pertaining to the nonattainment requirements of part D, title I of the CAA. In accordance with EPA's 2013 Infrastructure Guidance, the NNSR permitting program requirement of section 110(a)(2)(C) is to be addressed in a separate SIP. Section 110(a)(2)(I) is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1) and will be addressed in a separate process.

EPA is proposing to approve Maryland's August 17, 2016 infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS for elements under CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is not proposing any action in this rulemaking related to the interstate transport requirement of section 110(a)(2)(D)(i)(I). EPA will consider Maryland's 2010 1-hour SO<sub>2</sub> NAAQS infrastructure submission related to the section 110(a)(2)(D)(i)(I) requirements in a separate rulemaking. A detailed summary of EPA's review and rationale for approving Maryland's submittal, with the exception of section 110(a)(2)(D)(i)(I), may be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket ID Number EPA-R03-OAR-2018-0042.

### III. Proposed Action

EPA's review of this material indicates that MDE's August 17, 2016 infrastructure SIP submittal for CAA section 110(a)(2)(A), (B), (C), (D)(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2010 SO<sub>2</sub> NAAQS satisfies the infrastructure requirements of CAA section 110(a). EPA is proposing to approve Maryland's infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS for these elements. EPA is not taking action on the portion of the MDE submittal related to transport *i.e.*, section 110(a)(2)(D)(i)(I). EPA is soliciting public comments on EPA's

determination that Maryland's infrastructure SIP submittal meets the specific requirements of CAA section 110(a)(2) as set forth above and discussed in detail in the TSD for this action. These comments will be considered before taking final action.

### 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 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 approval of Maryland's infrastructure SIP submittal for the 2010 SO<sub>2</sub> NAAQS, with the exception of section 110(a)(2)(D)(i)(I), 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, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: April 25, 2019.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

[FR Doc. 2019-09337 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2019-0147; FRL-9993-33-Region 9]

### Air Plan Approval; California; Calaveras County Air Pollution Control District

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Calaveras County Air Pollution Control District (CCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns reporting of emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) in nonattainment areas. We are proposing to approve a local rule to require submittal of emissions statements under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action. **DATES:** Any comments must arrive by June 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0147 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting

<sup>1</sup> "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please

contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Nancy Levin, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone: (415) 972-3848 or by email at [levin.nancy@epa.gov](mailto:levin.nancy@epa.gov).

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

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- I. The State’s Submittal
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  - C. The EPA’s Recommendations To Further Improve the Rule
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- IV. Statutory and Executive Order Reviews

**I. The State’s Submittal**

*A. What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
CCAPCD .....	513 .....	Source Recordkeeping and Emission Statement .....	06/26/2018	11/21/2018

On April 19, 2019, the submittal for CCAPCD Rule 513 was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

We approved an earlier version of Rule 513, then numbered Rule 408 “Source Recordkeeping and Reporting,” into the SIP on May 11, 1977 (42 FR 23804). The CCAPCD renumbered and adopted revisions to Rule 408 on June 26, 2018, and CARB submitted Rule 513 “Source Recordkeeping and Emission Statement” on November 21, 2018. Submitted Rule 513 reorganizes the information contained in SIP-approved Rule 408. It also removes a requirement for sources to retain emissions reports submitted to the District.

*C. What is the purpose of the submitted rule?*

Emissions of VOCs and NO<sub>x</sub> help produce ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO<sub>x</sub> emissions. Rule 513 establishes requirements for the owner or operator of any stationary source to provide the CCAPCD a written statement showing actual emissions of VOC and NO<sub>x</sub> or operational data to estimate actual emissions from that source. The rule was revised to comply with CAA section 182(a)(3)(B). The EPA’s

technical support document (TSD) has more information about this rule.

**II. The EPA’s Evaluation and Action**

*A. How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). Areas classified as Marginal nonattainment or higher, such as the Calaveras County nonattainment area, are subject to the requirements of CAA section 182(a)(3)(B).

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and CAA requirements for the applicable criteria pollutants include the following:

- “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
- “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
- “(Draft) Guidance on the Implementation of an Emission Statement Program,” EPA, July 1992.

*B. Does the rule meet the evaluation criteria?*

This rule is consistent with CAA requirements and relevant guidance

regarding enforceability and SIP revisions. The TSD has more information on our evaluation.

*C. The EPA’s Recommendations To Further Improve the Rule*

The TSD includes recommendations for the next time the local agency modifies the rule.

*D. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until June 7, 2019. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

**III. Incorporation by Reference**

In this document, the 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, the EPA is proposing to incorporate by reference the CCAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://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).

#### IV. 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 proposed 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 (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 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).

#### 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: April 26, 2019.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2019-09474 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Part 300

[EPA-HQ-SFUND-1995-0005; FRL-9993-38-Region 4]

##### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Tennessee Products Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency Region 4 is issuing a Notice of Intent to Delete the Tennessee Products Superfund Site (Site) located in Chattanooga, Tennessee, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Tennessee (State), through the Tennessee Department of Environment and Conservation (TDEC), have determined that all appropriate response actions under CERCLA, other than Five-Year Reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments must be received by June 7, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-1995-0005, by one of the following methods:

- <http://www.regulations.gov>. Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://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>.

- **Email:** [Zeller.Craig@epa.gov](mailto:Zeller.Craig@epa.gov).
- **Mail:** Craig Zeller, Remedial Project Manager, U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303,
- **Hand delivery:** U.S. EPA Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303. Such deliveries are accepted only during the Docket's normal hours of operation (Monday through Friday, 9:00 a.m. to 5:00 p.m.), and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID no. EPA-HQ-SFUND-1995-0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured

and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at: U.S. EPA Region 4, Superfund Division, 61 Forsyth Street SW, Atlanta, Georgia 30303. Hours: Monday through Friday, 9:00 a.m. to 5:00 p.m. Tennessee Department of Environment and Conservation Division of Remediation, 1301 Riverfront Parkway, Suite 206, Chattanooga, Tennessee 37402. Hours: Monday through Friday, 8:00 a.m. to 4:30 p.m. Phone: 423-634-5745

**FOR FURTHER INFORMATION CONTACT:** Craig Zeller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303; phone: 404-562-8827; email: [zeller.craig@epa.gov](mailto:zeller.craig@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

**I. Introduction**

EPA Region 4 announces its intent to delete the Tennessee Products Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of

sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Tennessee Products Superfund Site and demonstrates how it meets the deletion criteria.

**II. NPL Deletion Criteria**

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- Responsible parties or other persons have implemented all appropriate response actions required;
- All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts Five-Year Reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure (see Operation and Maintenance and Five-Year Review section below). EPA conducts such Five-Year Reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

**III. Deletion Procedures**

The following procedures apply to deletion of the Site:

A. EPA consulted with the State before developing this Notice of Intent to Delete;

B. EPA has provided to the State 30 working days for review of this notice prior to publication of it today;

C. In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

D. The State, through its Department of Environment and Conservation, has concurred with deletion of the Site from the NPL (letter to EPA dated May 21, 2018);

E. Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, *The Chattanooga Times Free Press*. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL; and

F. The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this document, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

#### IV. Basis for Intended Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL.

##### A. Site Background and History

The Tennessee Products Superfund Site (TPS) is located in south Chattanooga, Hamilton County, Tennessee and is defined as 2.5-mile section of Chattanooga Creek that contained sediments contaminated primarily with polycyclic aromatic hydrocarbons (PAHs). During the early decades of the 20th Century, a coal carbonization (Coke) plant complex (named Tennessee Products) was responsible for waste disposal practices that led to the contamination of Chattanooga Creek sediments. Numerous discharges of contaminated water to Chattanooga Creek via tributaries, were documented. Results of previous investigations and subsequent evaluations indicated that existing conditions posed a potential unacceptable risk to human health, if exposure to the contaminated sediments were to occur.

The TPS Site was proposed for inclusion on the NPL in January 1994 (59 FR 2568) after completion of a multi-media investigation of Chattanooga Creek by the EPA and the issuance of a Health Advisory by the Agency for Toxic Substances and Disease Registry (ATSDR) in 1993. The Health Advisory concluded that "the presence of the coal tar in-and-around the creek poses a health and safety hazard." The TPS Site was placed on the NPL on September 29, 1995 (60 FR 50435). The EPA CERCLIS ID Number for this Site is TND071516959.

Based on the ATSDR Health Advisory, the EPA initiated a non-time-critical removal of the most accessible coal tar deposits along the upper reach of the Creek and behind the former Southern Coke and Chemical plant site (the Coke Plant area). On September 26, 1996, the EPA issued an Action Memorandum approving a non-time-critical removal action (Phase I removal action) as described in the 1996 Engineering Evaluation/ Cost Analysis (EE/CA). The Action Memorandum was amended on September 24, 1997, and on December 5, 1998, authorizing the expenditure of additional funding to address a larger volume of contaminated sediments in the Creek than previously estimated. Over the course of the eighteen months of the Phase I removal action, a total of 4,235 linear feet of Chattanooga Creek was excavated, along with three isolated tar pits located in the flood plain and adjacent to the former

coke plant. The total material excavated was 25,350 cubic yards, of which 22,934 cubic yards came from the excavation of Chattanooga Creek. The removal action was completed in December, 1998.

##### B. Remedial Investigation and Feasibility Study (RI/FS)

The purpose of a remedial investigation is to determine the nature and extent of contamination at a site and the threat to public health and the environment from a release, or potential release of hazardous substances from a site. The remedial investigation for the TPS Site included reviewing historical information and collecting samples from the air, water, soil, sediment and waste. The remedial investigation focused on the plant site, although a number of samples were also collected from areas surrounding the creek. EPA decided not to collect many creek sediment samples for this investigation because the EPA had conducted a comprehensive study of the creek in 1992 (*Chattanooga Creek Sediment Profile Study*).

The purpose of the Feasibility Study was to determine the best cleanup remedy. The EPA conducted a Feasibility Study focused on cleanup alternatives for the portion of the contaminated creek not addressed during the Phase I Removal. Other much smaller areas in the flood plain that were contaminated with coal-tar and its related chemicals were also addressed with the creek sediments.

The former plant property was not considered in the cleanup strategy for the Site, because the property was removed from the Tennessee Products NPL listing by Federal Courts. See the November 12, 1996, decision of the U.S. Court of Appeals for the D.C. Circuit in *Mead Corporation v. Browner* (No. 5-1610). Therefore, no remedy was proposed for the plant property. The plant property was addressed through the State Superfund program (TCA 68-212-201). After the court ruling, the NPL listing for the Site included only 2.5 miles of the creek.

Based on the remedial investigation and the risk assessment, the remedy objectives were:

- Prevent human exposure to contaminated soil along the Northeast Tributary and contaminated sediment in Chattanooga Creek; and,
- Eliminate risks to aquatic life in Chattanooga Creek from exposure to contaminated sediment.

Six remedial action alternatives were considered for evaluation in the Focused Feasibility Study Report. They were: (1) Taking no action; (2) Re-routing the creek and encapsulating (solidifying) the contaminated sediment;

- (3) Excavating contaminated sediment and disposing of it in an on-site landfill;
- (4) Excavating contaminated sediment and treatment with on-site thermal desorption;
- (5) Excavating with on-site incineration; and
- (6) Excavating with off-site disposal and recycling.

##### C. The Selected Remedy

In September 2002, EPA Region 4 issued the Final Record of Decision (ROD) for the TPS Site. The ROD selected the remedial action for the Middle Reach of Chattanooga Creek and a portion of the Northeast Tributary. The Middle Reach includes the bed and banks of Chattanooga Creek beginning 1,354 feet north of the 38th Street Bridge and extending to the confluence of Chattanooga Creek and Dobbs Branch, an approximate 1.9-mile section (the previous Non-Time Critical Removal Action addressed the upstream portion of the creek). Remediation of a dredged spoil pile located along the Northeast Tributary was also included in the ROD. The six remedial alternatives, including the no action alternative, were evaluated using nine criteria for remedy selection. Based on this evaluation, the EPA determined that excavating with off-site disposal and recycling (Alternative 6) was its preferred alternative for the Site. It provided the best balance of tradeoffs among the nine evaluation criteria and met the remedial goals by preventing future human contact with the coal-tar constituents and contaminated sediment in Chattanooga Creek. This remedy was used during the first phase of the cleanup (Non-Time Critical Removal) and was proven to be effective and efficient. Also, this was the only alternative considered to completely remove the waste material from the site. The remedy selected involved excavating coal-tar constituent waste and contaminated sediment beginning where the Phase 1 Cleanup ended (at 38th Street), to the confluence with Dobbs Branch. All of the contaminated sediment and waste in this segment of the creek was removed from the creek sides and bottom. Since the coal-tar contamination was easily identified by visual inspection, it was unnecessary to establish numerical cleanup standards. The cleanup was confirmed after a visual inspection of the work areas of the creek was performed. The scope of the remedy did not include groundwater, soil (other than specific areas containing tar waste), or surface water. The RI did not find contamination in those media requiring a remedial action.

#### D. Explanation of Significant Difference

In August of 2004, the EPA issued an Explanation of Significant Difference (ESD) to explain a change to a portion of the selected remedy. The remedy selected in the ROD was excavating with off-site disposal and recycling. The ESD changed the remedy to off-site disposal at the Bradley County Landfill. The recycling component of the remedy was eliminated due to the remedy encountering a larger volume of waste and the accompanying increase in costs.

#### E. The Remedial Action

The remedial action was implemented by dividing the creek into five segments, or creek channel reaches. In general, excavation of contaminated sediment and restoration activities occurred starting at the upstream segment and working downstream. The strategy for removal of sediments in the work area involved excavation in the dry. The creek dewatering process included installation of temporary coffer dams and pumping systems (large pumps and pipes) to route the creek water around the active reaches of excavation. The dams were constructed of clay and/or clean fill. The pumping systems were maintained twenty-four hours per day, seven days per week to keep the work areas dewatered. Contact between creek water and contaminated sediments in an active reach of excavation was minimized. However, water within the active stream reach that came in contact with excavated sediment was treated using an oil/water separator prior to discharge back into the creek.

Contaminated sediment from the creek channel was excavated until the remaining sediments were visually clean. Excavation activities began in October 2005 in Reach 1. Contaminated sediment was excavated from bank-to-bank, which was defined as the vegetative line at the edge of the creek; and, since limestone bedrock was not always present to define the vertical extent, all visual signs of sediment contamination were removed, and test pits were excavated to confirm that no other visual contamination existed. Where visible contamination extended beyond the creek bank, a maximum of three feet was removed horizontally from the original bank. The bank was then backfilled with clean fill and stabilized. When these efforts were completed, the EPA, or the designated representative, inspected the work area and verified that the performance standard was achieved. The excavated reach was then approved by the EPA before restoration activities were

completed and water was pumped back into that portion of the creek.

Excavation of the contaminated creek sediments was conducted in a manner to minimize handling and to contain the contaminated sediment within the creek before direct transfer to trucks for transport to a drying bed for stabilization. Typically, two excavators were in the creek reach working to transport sediment to a common area for load-out. Lime kiln dust (LKD) was added to the sediment in the creek to stabilize sediment that contained significant free liquids prior to loading into the truck. The mixture was allowed to cure for a period of time that was sufficient to promote drying before the sediment was loaded in trucks. These activities were performed as necessary to reduce spillage during loading of the trucks. The excavated sediments were then transported to drying beds located on the former Southern Wood Piedmont facility. Additional LKD was mixed into the sediment prior to transport to the Bradley County, Tennessee, landfill for final disposal. Approval by the TDEC Division of Solid Waste Management was required for disposal of special waste (contaminated sediment mixed with lime kiln dust) at the Bradley County Landfill. Disposal of the special waste from the Site was approved on October 10, 2005. Recertifications for the 2006 and 2007 construction seasons were submitted and approved as well.

During excavation of a portion of the creek oxbow in January 2006, a black liquid was observed infiltrating the bottom of the excavation. Twelve inches of clay was placed in the first 250-foot section of the oxbow in an attempt to seal off the liquid. The seal did not work. This section of the creek is on property owned by Southern Wood Piedmont Company, which treated railroad cross-ties with creosote from 1924 to 1988. The black liquid resembled creosote and differed in physical characteristics from the coal-tar impacted sediments that were encountered in the upper reaches of the creek channel remediation. While the project was temporarily shut down because of high water conditions, the EPA performed a field investigation in March 2006 within and adjacent to Chattanooga Creek to evaluate this Non Aqueous Phase Liquid (NAPL). The general objectives of the investigation were to:

- Determine the horizontal and vertical extent of the NAPL in the oxbow section;
- Evaluate whether the presence of NAPL in the oxbow creates a potential for re-contamination;

- Assess NAPL transport pathways and potential sources of NAPL; and
- Evaluate the potential risks to human health and the environment posed by the NAPL.

The results of the EPA investigation were presented in a June 2006 document titled *Chattanooga Creek NAPL Assessment, Chattanooga, Tennessee*. Based on results of the investigation, the EPA determined that the Statement of Work and related work plans should be modified to address the changed site conditions encountered. The EPA determined that these modifications were necessary to achieve the Performance Standards and to maintain the effectiveness of the remedy. In June 2006, the Statement of Work was modified to include design and installation of a protective isolation barrier in those sections of Chattanooga Creek where NAPL was encountered. This modification is consistent with the scope of the selected remedy, which included “stabilizing creek banks where necessary to minimize erosion or prevent contamination buried in the creek bank from re-entering the creek,” as described in the Statement of Work. The objective of the protective isolation barrier was to minimize the potential for NAPL to recontaminate the restored creek channel.

The design for the isolation barrier included the use of AquaBlok®, which is a patented solid aggregate that is coated with a clay polymer that expands when hydrated. For the isolation barrier, a minimum 12-inch prepared subgrade soil layer was placed over the creek bed and banks to a level that was a minimum of three feet above the highest point of observed NAPL intrusion. The creek banks were graded or maintained at a maximum 3:1 slope. The protective isolation barrier was placed from where the creek crosses the Southern Wood Piedmont property to the confluence of Dobbs Branch, or approximately 5,750 linear feet of restored creek channel. A total of 308,878.3 square feet of isolation barrier, or approximately 7.1 acres, was installed. A combination of placing riprap and seeding was performed for creek bank stabilization. Restoration was consistent with the previous removal action at the upper reach of Chattanooga Creek. Areas of the creek bank where excavation of the bank had occurred or potential eroding locations (specifically on outer radius of curves) were stabilized by one of two methods. The first method included placement of a 6-oz non-woven geotextile covered by 6-inch riprap. The riprap was obtained from the temporary coffer dams or imported as required. Other locations requiring stabilization were seeded for a

more natural restoration method, as feasible.

A final total of 107,292 tons of contaminated sediment and debris were transported to the landfill for disposal over the course of the project in a total of 4,338 truck loads. The last load of stabilized sediment was transported from the Site to the landfill on September 4, 2007. Discarded tires found in the creek were removed and pressure washed. A total of 15.01 tons of tires were sent to a recycler in Nashville, Tennessee.

Operation and Maintenance and Five-Year Reviews (FYRs)

No long-term operation and maintenance or monitoring activities under CERCLA are required by the ROD or the RD/RA Consent Decree. Discretionary Five-Year Reviews will be conducted by the EPA to assess whether the protective isolation barrier continues to function as an effective engineering control to isolate the creek from the nearby NAPL source in the oxbow area. Operation and Maintenance and monitoring are the responsibility of the Southern Wood Piedmont facility under the Resource Conservation and Recovery Act (RCRA) through the Final RCRA Post-Closure Permit for the Southern Wood Piedmont facility, which is delegated to the TDEC. The triggering date for the discretionary Five-Year Review is five years from the formal authorization to proceed on October 12, 2005. There have been two FYRs in 2011 and 2016. EPA is conducting Discretionary Five-Year Reviews because a protective isolation barrier was installed to isolate the CERCLA remedy from adjacent areas where hazardous substances, pollutants or contaminants could remain above levels that allow for unlimited use and unrestricted exposure as defined by CERCLA. The most recent Five-Year Review was completed on September 26, 2016, and reported no issues or recommendations. The 2016 Five-Year Review concluded that the remedy at the Tennessee Products Site remains protective of human health and the environment, both in the short term and long term. The site inspections and sampling events concluded that the AquaBlok® cap is functioning as intended. These reviews will continue until the NAPL under the creek is addressed through the September 2005 RCRA Post-Closure Permit for the Southern Wood Piedmont facility. No institutional controls were required by the ROD.

#### Community Involvement

Community involvement activities were conducted throughout the Non-Time Critical Removal and Remedial Action. Public notices and meetings were routinely held. An administrative record and information repository was placed in the community to provide accessible information about the activities at the Site. An advertisement will be placed in the *Chattanooga Times Free Press* announcing the deletion of the Site during the comment period. The community proposed a public park (greenway) along the bank of the creek during the remedial action, but no future plans for the development of the Site have been determined.

#### Determination That the Site Meets the Criteria for Deletion in the NCP

Region 4 has followed the procedures required by 40 CFR 300.425(e), and the implemented remedy achieves the degree of cleanup specified in the ROD for all pathways of exposure. The EPA confirmed that the sediment remedial action objectives and performance criteria were achieved. All cleanup actions specified in the ROD have been implemented. All selected remedial and removal action objectives and associated cleanup levels are consistent with agency policy and guidance, and are summarized in the Final Close-Out Report. This Site meets all the site completion requirements as specified in Office of Solid Waste and Emergency Response (OSWER) Directive 9320.22, *Close-Out Procedures for National Priorities List Sites*. A Final Close-Out Report was issued by the EPA on September 26, 2008. A supplemental Final Close-Out Report was also issued by the EPA on March 4, 2019, confirming that the remedy was complete and met the remedial action goals of the ROD. No further Superfund response is needed to protect human health and the environment. The EPA, with concurrence of the State of Tennessee, has determined that all appropriate response actions under CERCLA have been completed. Therefore, the EPA intends to delete the Site from the NPL.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund, Water pollution control.

**Authority:** 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 22, 2019.

**Mary S. Walker,**

*Acting Regional Administrator.*

[FR Doc. 2019–09476 Filed 5–7–19; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 30

[AU Docket No. 19–59; FCC 19–35]

### Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 103

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; proposed auction procedures.

**SUMMARY:** In this document, the Commission announces auctions of Upper Microwave Flexible Use Service licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands, designated as Auction 103. This document proposes and seeks comment on competitive bidding procedures to be used for Auction 103.

**DATES:** Comments are due on or before May 15, 2019, and reply comments are due on or before May 30, 2019.

**ADDRESSES:** Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). All filings in response to the *Auction 103 Comment Public Notice* must refer to AU Docket No. 19–59. The Commission strongly encourages interested parties to file comments electronically and requests that an additional copy of all comments and reply comments be submitted electronically to the following email address: [auction103@fcc.gov](mailto:auction103@fcc.gov).

*Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket number, AU Docket No. 19–59.

*Paper Filers:* Parties who choose to file by paper must file an original and

one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** For auction legal questions, Mark Montano or Erik Beith in the Auctions Division of the Office of Economics and Analytics at (202) 418-0660. For general auction questions, the Auctions Hotline at (717) 338-2868. For Upper Microwave Flexible Use Service questions, Simon Banyai in the Wireless Telecommunications Bureau's Broadband Division at (202) 418-2487.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 103 Comment Public Notice*, AU Docket No. 19-59, FCC 19-35, adopted on April 12, 2019 and released on April 15, 2019. The *Auction 103 Comment Public Notice* includes the following attachment: Attachment A, Summary of MHz pops by PEA. The complete text of the *Auction 103 Comment Public Notice*, including its attachment, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW, Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at [www.fcc.gov/auction/103/](http://www.fcc.gov/auction/103/) or by using the search function for AU Docket No. 19-59 on the Commission's ECFS web page at [www.fcc.gov/ecfs/](http://www.fcc.gov/ecfs/). Alternative formats

are available to persons with disabilities by sending an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the *Auction 103 Comment Public Notice* in AU Docket No. 19-59.

### I. Introduction

1. By the *Auction 103 Comment Public Notice*, the Commission seeks comment on the procedures to be used for Auction 103, the incentive auction of Upper Microwave Flexible Use Service (UMFUS) licenses in the Upper 37 GHz (37.6-38.6 GHz), 39 GHz (38.6-40 GHz), and 47 GHz (47.2-48.2 GHz) bands. The Commission proposes to use an ascending clock auction format for the licenses offered in Auction 103 and then hold a sealed bid assignment phase. The clock phase of Auction 103 serves as both the forward and reverse portions of the incentive auction by determining the prices and winners of new flexible use licenses as well as determining the amount of incentive payments to those incumbent licensees that relinquish spectrum usage rights.

### II. Licenses To Be Offered in Auction 103

2. Auction 103 will offer UMFUS licenses for all available spectrum in the Upper 37 GHz (37.6-38.6 GHz), 39 GHz (38.6-40 GHz), and 47 GHz (47.2-48.2 GHz) bands. The Commission will offer 100 megahertz blocks of spectrum licensed by Partial Economic Area (PEA) service area. In combination, the Upper 37 GHz and the 39 GHz bands offer the largest amount of contiguous spectrum in the millimeter wave bands for flexible-use wireless services—a total of 2,400 megahertz—and the 47 GHz band will provide an additional 1,000 megahertz of millimeter wave spectrum for such services. The Commission proposes to limit Auction 103 to only these bands because licenses for no other UMFUS spectrum bands are ready and/or suitable to be auctioned at this same time.

3. The specific number of Upper 37 and 39 GHz licenses to be auctioned in each PEA will be determined by the reconfiguration process, which concludes with the Initial Commitments of 39 GHz incumbents as described in the *Spectrum Frontiers Fourth R&O*, 84 FR 1618, February 2, 2019, and the *Initial Reconfiguration Procedures Public Notice*, 84 FR 11723, March 28, 2019. The licenses that will be available

in the auction depend, in part, on upcoming decisions by those entities that currently hold 39 GHz licenses (referred to as "incumbents") to either accept modified licenses, reconfigured to conform with the new band plan and service areas, or to relinquish all their existing spectrum usage rights in exchange for a share of the auction proceeds. If all incumbents choose to relinquish their licenses, the Commission will offer new licenses for 3,400 megahertz of spectrum across all three spectrum bands, or 34 licenses in every PEA. Following incumbents' binding commitments, a public notice will announce the specific licenses available in the Upper 37 and 39 GHz bands for auction. This public notice will be released well in advance of the deadline for the submission of short-form applications to bid in Auction 103 so that potential applicants can make informed decisions whether to apply.

4. It is possible that an incumbent that chooses to receive modified licenses will decide to retain its partial PEA holding (*i.e.*, covering less than the full geographic area of a PEA). The remaining portion of the spectrum block will thus have unassigned spectrum usage rights. The Commission does not propose to make this "white space" available in the auction.

5. Each of the bands available in Auction 103 will be licensed on an unpaired basis in 100 megahertz channel blocks by PEA. A licensee in these bands may provide any services permitted under a fixed or mobile allocation, as set forth in the non-Federal Government column of the Table of Frequency Allocations in section 2.106 of the Commission's rules.

### III. Proposed Pre-Bidding Procedures

6. In the *2016 Spectrum Frontiers Order*, 81 FR 79894, November 14, 2016, the Commission decided to conduct any auction of UMFUS licenses in conformity with the amended Part 1 rules. The Commission's Part 1 rules require each applicant seeking to bid to acquire licenses in a spectrum auction to provide certain information in a short-form application (FCC Form 175), including ownership details and numerous certifications. This is a separate and distinct application from the application (FCC Form 175-A) that incumbents must file concerning their existing license holdings. In other words, an incumbent wishing to bid to acquire licenses in the auction must file both applications. For Auction 103, the Commission is not proposing that short-form applicants provide any additional categories of information than those already required by its rules.

7. *Prohibited Communications.* In connection with the application process, the *Initial Reconfiguration Procedures Public Notice* discusses certain issues that are also applicable to entities that wish to acquire licenses in Auction 103. In particular, the *Initial Reconfiguration Procedures Public Notice* addresses the applicability to 39 GHz incumbents of section 1.2105(c)(1), which prohibits applicants from engaging in certain communications relating to bids and bidding strategies. As the public notice explains, the rule would apply not only to a short-form applicant's communication to another applicant, but also to (i) a specific entity that is considered a nationwide provider (here, AT&T, Sprint, T-Mobile, and Verizon Wireless) and (ii) an incumbent that files an application (FCC Form 175–A) as part of the process for it to select whether to retain or relinquish its existing license(s).

8. *Joint Bidding Arrangements.* That same analysis applies to the Part 1 rules' prohibition of joint bidding arrangements. To implement the prohibition on joint bidding arrangements, the Commission's rules require each auction applicant to certify in its short-form application that it has disclosed any arrangements or understandings of any kind relating to the licenses being auctioned to which it (or any party that controls or is controlled by it) is a party; the applicant must also certify that it (or any party that controls or is controlled by it) has not entered and will not enter into any arrangement or understanding of any kind relating directly or indirectly to bidding at auction with, among others, "any other applicant" or a nationwide provider. For Auction 103, therefore, a short-form applicant's certifications with respect to its arrangements or understandings will necessarily encompass an incumbent that files an FCC Form 175–A application (or any party that controls or is controlled by it).

#### A. Bidding Credit Caps

9. The Commission seeks comment on establishing reasonable caps on the total amount of bidding credits that an eligible small business or rural service provider may be awarded for Auction 103.

10. In the *2016 Spectrum Frontiers Order*, the Commission determined that an entity with average annual gross revenues for the preceding three years not exceeding \$55 million would be designated as a "small business" eligible for a 15% bidding credit, and that an entity with average annual gross revenues for the preceding three years not exceeding \$20 million would be

designated as a "very small business" eligible for a 25% bidding credit. The Commission further determined that entities providing commercial communication services to a customer base of fewer than 250,000 combined wireless, wireline, broadband, and cable subscribers in primarily rural areas would be eligible for the 15% rural service provider bidding credit.

11. The Commission, in the *2015 Part 1 Report and Order*, 80 FR 56764, September 18, 2015, established a process to implement a reasonable cap on the total amount of bidding credits that an eligible small business or rural service provider may be awarded in any auction, based on an evaluation of the expected capital requirements presented by the particular service and inventory of licenses being auctioned. The Commission determined that bidding credit caps would be implemented on an auction-by-auction basis, but resolved that, for any particular auction, the total amount of the bidding credit cap for small businesses would not be less than \$25 million, and the bidding credit cap for rural service providers would not be less than \$10 million. For Auction 101 and Auction 102, the Commission adopted a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business in each auction (*i.e.*, \$25 million in each auction) and a \$10 million cap on rural service provider bidding credits in each auction.

12. The Commission proposes to adopt the same bidding credit caps for Auction 103. Like Auction 101 and Auction 102, Auction 103 will offer licenses in the millimeter wave spectrum, and the Commission anticipates that the range of potential use cases suitable for the UMFUS bands, including localized fiber replacement and IoT, combined with the small license areas in these bands, may permit deployment of smaller scale networks with lower total costs. Further, based on past auction data, the Commission expects that a \$25 million cap on small business bidding credits will allow the substantial majority of small businesses in the auction to take full advantage of the bidding credit program. The Commission therefore believes that its proposed cap will promote the statutory goals of providing meaningful opportunities for *bona fide* small businesses to compete in auctions and in the provision of spectrum-based services, without compromising the Commission's responsibility to prevent unjust enrichment and ensure efficient and intensive use of spectrum.

13. The Commission proposes to adopt a \$10 million cap on the total

amount of bidding credits that may be awarded to an eligible rural service provider in Auction 103. The Commission anticipates that a \$10 million cap on rural service provider bidding credits will not constrain the ability of any rural service provider to participate fully and fairly in Auction 103. In addition, to create parity in Auction 103 among eligible small businesses and rural service providers competing against each other in smaller markets, the Commission proposes a \$10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to winning licenses in markets with a population of 500,000 or less.

14. The Commission seeks comment on these proposed caps. Specifically, do the expected capital requirements associated with operating in the UMFUS bands, the potential number and value of UMFUS licenses, past auction data, or any other considerations justify a higher or lower cap for either type of bidding credit? Moreover, are there convincing reasons why the Commission should not achieve parity with the bidding credit caps in Auctions 101 and 102? Commenters are encouraged to identify unique circumstances and characteristics of this millimeter wave auction that should guide the Commission in establishing bidding credit caps, and to provide specific, data-driven arguments in support of their proposals.

15. The Commission reminds applicants applying for designated entity bidding credits that they should take due account of the requirements of the Commission's rules and implementing orders regarding *de jure* and *de facto* control of such applicants. These rules include a prohibition, which applies to all applicants (whether or not seeking bidding credits), against changes in ownership of the applicant that would constitute an assignment or transfer of control. Applicants should not expect to receive any opportunities to revise their ownership structure after the filing of their short- and long-form applications, including making revisions to their agreements or other arrangements with interest holders, lenders, or others in order to address potential concerns relating to compliance with the designated entity bidding credit requirements.

#### B. Information Procedures During the Auction Process

16. As with most recent Commission spectrum license auctions, the Commission proposes to limit information available in Auction 103 in order to prevent the identification of

bidders placing particular bids until after the bidding has closed. More specifically, the Commission proposes to not make public until after bidding has closed: (1) The license areas that an applicant selects for bidding in its short-form application (FCC Form 175), (2) the amount of any upfront payment made by or on behalf of an applicant for Auction 103, (3) any applicant's bidding eligibility, and (4) any other bidding-related information that might reveal the identity of the bidder placing a bid.

17. Once the bidding in Auction 103 starts, under these proposed limited information procedures (sometimes also referred to as anonymous bidding), information to be made public after each round of bidding would include for each category of license in each geographic area, the supply, the aggregate demand, the price at the end of the last completed round, and the price for the next round. However, the identities of bidders placing specific bids and the net bid amounts (reflecting bidding credits) would not be disclosed until after the close of bidding.

18. Bidders would have access through the bidding system to additional information related to their own bidding and bid eligibility. For example, bidders would be able to view their own level of eligibility, before and during the auction, through the FCC auction bidding system.

19. After the close of bidding, bidders' PEA selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

20. The Commission seeks comment on the details of its proposal for implementing limited information procedures, or anonymous bidding, in Auction 103. Commenters opposing the use of anonymous bidding in Auctions 103 should explain their reasoning and propose alternative information rules.

#### IV. Due Diligence

21. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in Auction 103. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The Commission makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that a Commission auction represents an opportunity to become a Commission licensee, subject to certain conditions and regulations. This includes the established authority

of the Commission to alter the terms of existing licenses by rulemaking, which is equally applicable to licenses awarded by auction. A Commission auction does not constitute an endorsement by the Commission of any particular service, technology, or product, nor does a Commission license constitute a guarantee of business success.

22. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 103 license, it will be able to build and operate facilities that will comply fully with all applicable technical and regulatory requirements. For example, licensees operating in the Upper 37 GHz band near specific Federal sites must coordinate with those Federal operations. The Commission strongly encourages each applicant to inspect any prospective sites for communications facilities located in, or near, the geographic area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

23. The Commission strongly encourages each applicant to conduct its own research prior to Auction 103 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect its decisions regarding participation in the auction.

24. The Commission also strongly encourages participants in Auction 103 to continue such research throughout the auction. The due diligence considerations mentioned in the document do not constitute an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon the specific facts and circumstances related to its interests.

25. The Commission also reminds bidders of the Commission's mobile spectrum holding policies applicable to the millimeter wave bands. Specifically, for purposes of reviewing proposed secondary market transactions, the Commission adopted a threshold of 1850 megahertz of combined millimeter wave spectrum in the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands. In addition, the Commission found that it is in the public interest to review applications for initial licenses filed post-auction on a case-by-case basis

using this same 1850 megahertz threshold.

#### V. Proposed Bidding Procedures

##### A. Clock Phase

##### 1. Clock Auction Design

26. The Commission will conduct Auction 103 using an ascending clock auction design that will offer licenses for spectrum held by the Commission and for spectrum relinquished by incumbent licensees, and which will also determine incentive payments for relinquishing licensees. The first phase of the incentive auction will consist of successive clock bidding rounds in which bidders indicate their demands for categories of generic license blocks in specific partial economic areas (PEAs), followed by a second phase with bidding for frequency-specific license assignments, as the Commission decided in the *Spectrum Frontiers Fourth R&O*. The Commission seeks comment on the specific clock auction procedures it proposes to use for Auction 103. The Commission directs the Office, in conjunction with the Bureau, to release, concurrent with the Public Notice, technical guides that provide the mathematical details of the proposed auction procedures and algorithms for the clock and assignment phases of Auction 103. The information in the technical guides supplements the proposals in the Public Notice.

27. As in the clock auction used in the forward auction portion of the Broadcast Incentive Auction (Auction 1002) and the auction of licenses in the 24 GHz Band (Auction 102), the clock auction for Auction 103 will incorporate bidding for categories of generic spectrum blocks. The auction will proceed in a series of rounds, with bidding being conducted simultaneously for all spectrum blocks available in the auction. During the clock phase, the FCC auction bidding system will announce prices for blocks in each category in each PEA, and qualified bidders will submit quantity bids for the number of blocks they seek. Bidding rounds will be open for predetermined periods of time, during which bidders will indicate their demands for blocks at the clock prices associated with the current round. As in SMR auctions, bidders will be subject to activity and eligibility rules that govern the pace at which they participate in the auction.

28. Under the ascending clock auction format adopted by the Commission, in each PEA, the clock price for a license category will increase from round to round if bidders indicate total demand that exceeds the number of blocks

available in the category. The clock rounds will continue until, for all categories of blocks in all PEAs, the number of blocks demanded does not exceed the supply of available blocks. At that point, those bidders indicating demand for a block in a category at the final clock phase price will be deemed winning bidders. The final clock phase price for a generic block in a PEA will determine the incentive payment associated with a relinquished block of spectrum in the PEA.

29. Following the clock phase, the assignment phase will offer clock phase winners the opportunity to bid an additional amount for licenses with specific frequencies. All winning bidders, regardless of whether they bid in the assignment phase, will be assigned licenses for contiguous blocks within a category in a PEA.

30. The Commission seeks comment on specific procedures to implement this ascending clock auction and on alternative procedures for conducting, in a timely manner, an auction of Upper 37 GHz, 39 GHz, and 47 GHz licenses.

## 2. Determining Categories of Generic Blocks for Bidding

31. The *Spectrum Frontiers Fourth R&O* determined that the Upper 37 GHz, 39 GHz, and 47 GHz bands would be reconfigured and licensed in uniform 100 megahertz blocks in each of 416 PEAs. To facilitate bidding in the clock phase, the Commission proposes to establish two categories of generic blocks in each PEA.

32. The Commission proposes that the first category will consist of the available blocks between 37.6–40 GHz. This category, designated Category M/N, will comprise a total of twenty-four blocks: Ten in the Upper 37 GHz band (Blocks M1–M10) and 14 in the 39 GHz band (Blocks N1–N14). These 24 blocks represent a continuous swath of spectrum, and including them in a single bidding category should speed up the auction and give bidders greater flexibility to aggregate multiple contiguous spectrum blocks. A second category, Category P, will consist of the ten blocks between 47.2–48.2 GHz (Blocks P1–P10).

33. In each bidding round, a bidder will have the opportunity to bid for the quantity of generic blocks it demands in each of the two bidding categories. Bidding in the clock phase will determine a single price for all the generic blocks in each category in each PEA.

34. If an incumbent, in the Initial Commitment phase, chooses to accept a reconfigured license (full or partial) in one or more PEAs, the number of

generic blocks available for bidding in the M/N category in those PEAs will be reduced accordingly. As a result, under this proposed procedure, there may be fewer than 24 blocks available for bidding in some PEAs in the M/N category. The Commission proposes to announce the full auction inventory—*i.e.*, the number of blocks available in each category in each PEA—after the Initial Commitment phase has closed.

35. The Commission's proposal for bidding on generic blocks in two categories is based on the close similarity of the blocks within each bidding category. To the extent a bidder has a preference for specific frequency licenses, the bidder may bid for its preferred blocks in the assignment phase. However, a bidder for a generic block cannot be assured that it will be assigned, or not be assigned, any particular frequency block. The Commission asks that commenters explain any concerns they may have about the interchangeability of generic blocks within the two proposed categories of generic blocks, bearing in mind potential tradeoffs between the number of categories and auction length, the ability of the auction system to assign contiguous blocks to winners of multiple blocks, and bidder manageability.

## 3. Determining Incentive Payments

36. The final clock phase price for a generic licensing block in Category M/N in a given PEA will determine the incentive payment associated with 100 megahertz of relinquished spectrum rights in that PEA. Further, an incumbent that relinquishes spectrum rights equivalent to fewer than 100 megahertz in the full geography of the PEA will be entitled to an incentive payment equal to the final clock phase price for a Category M/N block times the fraction of its relinquished rights, measured in MHz-pops, relative to the full number of MHz-pops in the PEA.

37. An incumbent that both relinquishes the equivalent of a full block of spectrum rights in Category M/N in a PEA and wins a generic block in the category in the same PEA will, in effect, receive an incentive payment credit equal to the final clock phase price and incur an obligation in the same amount, for a net clock phase payment of zero. If an incumbent chooses to bid for specific frequencies in the assignment phase, the incumbent will be obligated to pay any additional payment.

38. An incumbent that is eligible for bidding credits and that both relinquishes spectrum and bids for new licenses will receive a bidding credit

discount only on its net cash payment for new licenses.

## 4. Bidding Rounds

39. Under this proposal, Auction 103 will consist of sequential bidding rounds, each followed by the release of round results. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of bidding.

40. Auction 103 will be conducted over the internet using the FCC auction bidding system. Bidders will also have the option of placing bids by telephone through a dedicated auction bidder line. The toll-free telephone number for the auction bidder line will be provided to qualified bidders prior to the start of bidding in the auction.

41. The Commission proposes that the initial bidding schedule may be adjusted in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Such changes may include the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Commission seeks comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirement or the increment percentage, or by using other means.

## 5. Net Revenue Requirement

42. The Commission proposes an aggregate net revenue requirement to ensure that the proceeds from Auction 103, net of bidding credits, are sufficient to cover incentive payment obligations to incumbents relinquishing spectrum. Under this proposal, the Commission will consider revenues from licenses in the Upper 37 GHz, 39 GHz, and the 47 GHz bands in determining whether the net revenue requirement has been met. The Commission proposes to make available to bidders an estimate of the current shortfall for meeting the net revenue requirement, updated after each round of bidding, until the requirement is met. The Commission proposes to indicate on the Public Reporting System (PRS) whether the requirement has been met. The Commission further proposes to consider only clock phase revenues in determining whether the net revenue requirement is met.

43. Under this proposal, the shortfall figure the Commission makes available prior to the close of bidding in the clock

phase will be a conservative estimate. It will not be known whether the clock phase winners will be designated entities that can claim a bidding credit until the clock phase bidding has ended. Consequently, the revenue estimate that is used to calculate the shortfall for rounds before the net revenue requirement has been met will assume, for a category in a PEA with excess demand, that blocks are won by the bidders with the highest bidding credit percentages, to the extent that designated entities are among the bidders still demanding blocks in the category in the PEA. This includes a check to consider bidding credit caps. In so doing, the Commission avoids a potential situation whereby the net revenue requirement appears to be met, but then actual net revenues are insufficient to cover incentive payments when bidding credits are considered. For a category in a PEA without excess demand, the requirement will be evaluated based on a true calculation of net revenue after bid processing, rather than on the estimate, since information on how to apply bidding credits precisely will be available in that case. If the net revenue requirement has not been met after a round, the estimated shortfall will be calculated as the incentive payments across all incumbents after the round minus the revenue estimate across all categories and PEAs, rounded up to the nearest \$1 million.

44. The Commission proposes to consider only clock phase revenues—not assignment phase revenues—in determining whether the net revenue requirement is met. Revenues from assignment phase payments are expected to be small relative to those from the clock phase and therefore less likely to contribute significantly to meeting the revenue requirement. Because assignment phase payments are determined using a second-price rule, an individual bidder wishing to boost revenues intentionally will have little ability to do so. In addition, the Commission is mindful of the additional time required to conduct assignment rounds, and it does not wish to require bidders or Commission staff to invest the additional time in the assignment phase if ultimately no licenses will be assigned.

45. If the net revenue requirement has been satisfied at the time that the clock phase bidding stops for both categories of blocks, the auction system will determine the winning bidders of generic blocks, and the auction will proceed to the assignment phase. If the net revenue requirement has not been satisfied at the time bidding stops in the

clock phase, the auction will end, and no new licenses will be assigned. Incumbents in the 39 GHz band will retain their original licenses pending further decisions by the Commission.

46. The Commission seeks comment on its proposed net revenue requirement and on its proposals to make available a conservative estimate of the shortfall after each round and to consider only clock phase revenues in determining whether the requirement has been met.

#### 6. Stopping Rule

47. The Commission proposes a simultaneous stopping rule for the clock phase of Auction 103, under which both categories of licenses in all PEAs will remain available for bidding until the bidding stops on both categories. Specifically, the Commission proposes that the clock phase of bidding will end for both categories of blocks after the first round in which there is no excess demand in any category in any PEA. Consequently, under this approach, it is not possible to determine in advance how long Auction 103 would last.

48. The Commission seeks comment on its proposed simultaneous stopping rule.

#### 7. Upfront Payments and Bidding Eligibility

49. In keeping with the Commission's usual practice in spectrum license auctions, the Commission proposes that applicants be required to submit upfront payments as a prerequisite to becoming qualified to bid. The upfront payment is a refundable deposit made by an applicant to establish its eligibility to bid on licenses. Upfront payments that are related to the inventory of licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of bidding.

50. The Commission proposes to assign each PEA a specific number of bidding units, equal to one bidding unit per \$10 of the upfront payment. The number of bidding units for a given PEA is fixed and does not change during the auction as prices change. The bidding unit amount assigned to a specific PEA will apply to a single generic block for that PEA. Bidding units will be used for purposes of measuring bidder eligibility and bidding activity. The Commission further proposes to determine the bidding units for a PEA based on the same weights it will use in the reconfiguration process and in Round Zero to quantify the weighted MHz-pops of an incumbent's spectrum holdings. Since weights are not yet determined, Attachment A to the document lists the

MHz-pops of each PEA, and the Commission will update Attachment A with bidding units and upfront payment amounts when the weights are available.

51. Taking into account the various purposes of upfront payments, the Commission proposes to use a tiered approach, under which upfront payment amounts will vary by market population. The Commission proposes upfront payments for a generic block in a PEA based on \$0.001 per weighted MHz-pop for PEAs 1–50, \$0.0002 per weighted MHz-pop for PEAs 51–100, and \$0.0001 per weighted MHz-pop in other PEAs. The proposed upfront payments equal approximately half the proposed minimum opening bids. The Commission seeks comment on the proposed method for calculating upfront payment amounts. For informational purposes, Attachment A shows the unweighted MHz-pops per each PEA and the result of multiplying the unweighted MHz-pops by \$0.001, \$0.0002, or \$0.0001 depending on the PEA.

52. The Commission further proposes that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. To the extent that bidders wish to bid on multiple generic blocks simultaneously, they will need to ensure that their upfront payment provides enough eligibility to cover multiple blocks. Under the proposed approach to calculating bidding units, the generic Category M/N and Category P blocks in a PEA will be assigned the same number of bidding units, which will facilitate bidding across categories.

53. Under the proposed approach, a bidder's upfront payment will not be attributed to blocks in a specific PEA or PEAs. If an applicant is found to be qualified to bid on more than one block being offered in Auction 103, such a bidder may place bids on multiple blocks, provided that the total number of bidding units associated with those blocks does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid in any single round and submit an upfront payment amount covering that total number of bidding units. The Commission seeks comment on these proposals.

54. In connection with the proposed upfront payment amounts and corresponding bidding eligibility, the Commission tentatively concludes that

it will not adopt a different upfront payment procedure for incumbent bidders relinquishing spectrum rights. The Commission asks any commenter that disagrees with this tentative conclusion not to adopt procedures that would allow incumbents to make their upfront payment with significantly less cash to consider whether such an approach would give the Commission sufficient funds from which to collect default payments, given that defaults may occur for reasons other than non-payment of winning bids. In addition, would the approach serve to deter insincere bidding, given that an incumbent's bidding eligibility would derive from its intended relinquishments rather than from its intended bidding for new licenses? If license relinquishments could be credited toward upfront payments, would the associated bidding eligibility apply to any PEA or just to the PEA in which a license is relinquished, and if the latter, how would that comport with eligibility accruing from cash upfront payments, which is not PEA-specific?

#### 8. Activity Rule, Activity Rule Waivers, and Reducing Eligibility

55. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. For a clock auction, a bidder's activity in a round for purposes of the activity rule will be the sum of the bidding units associated with the bidder's demands as applied by the auction system during bid processing. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

56. The Commission proposes to require that bidders maintain a fixed, high level of activity in each round of Auction 103 in order to maintain bidding eligibility. Specifically, the Commission proposes to require that bidders be active on between 90 and 100% of their bidding eligibility in all clock rounds, with an initial activity requirement of 95%. Thus, the activity rule would be satisfied when a bidder has bidding activity on blocks with bidding units that total 90 to 100% of its current eligibility in the round. If the activity rule is met, then the bidder's eligibility does not change in the next round. The Commission proposes to calculate bidding activity based on the

bids that are applied by the FCC auction bidding system. That is, if a bidder requests a reduction in the quantity of blocks it demands in a category, but the FCC auction bidding system does not apply the request because demand for the category would fall below the available supply, the bidder's activity will reflect its unreduced demand. If the activity rule is not met in a round, a bidder's eligibility automatically would be reduced. The activity requirements may be changed during the auction.

57. The Commission invites comment on this proposal, in particular on whether to set the activity requirement between 90% and 100%. Commenters may wish to address the relationship between the proposed activity rule and the ability of bidders to switch their demands across PEAs or across categories of blocks within a PEA. The Commission encourages any commenters that oppose an activity rule in this range to explain their reasons with specificity.

58. The Commission points out that under its proposed clock auction, bidders are required to indicate their demands in every round, even if their demands at the new round's prices are unchanged from the previous round. Missing bids—bids that are not reconfirmed—are treated by the auction bidding system as requests to reduce to a quantity of zero blocks for the category. If these requests are applied, or applied partially, a bidder's bidding activity, and hence its bidding eligibility for the next round, will be reduced.

59. For Auction 103, the Commission does not propose to provide for activity rule waivers to preserve a bidder's eligibility. This proposal is consistent with the ascending clock auction procedures adopted for Auctions 1002 and 102. In previous Commission multiple round auctions, when a bidder's eligibility in the current round was below a required minimum level, the bidder was able to preserve its current level of eligibility with a limited number of activity rule waivers. The clock auction, however, relies on precisely identifying the point at which demand falls to equal supply to determine winning bidders and final prices. Allowing waivers would create uncertainty with respect to the exact level of bidder demand, interfering with the basic clock price-setting and winner determination mechanisms. Moreover, uncertainty about the level of demand would affect the way bidders' requests to reduce demand are processed by the FCC auction bidding system. The Commission seeks comment on this proposal.

#### 9. Acceptable Bids

##### a. Reserve Price or Minimum Opening Bids

60. The Commission seeks comment on the use of a minimum opening bid amount and/or reserve price for Auction 103, as it does prior to the start of each auction.

61. A reserve price is an absolute minimum price below which a construction permit or license will not be sold in a given auction. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. In Auction 103, if there are any PEAs in which demand for blocks never exceeds the supply of blocks, the minimum opening bid will serve as the basis for determining incentive payments to incumbents relinquishing spectrum in a PEA (because the final clock phase price will be equal to the minimum opening bid).

62. The Commission proposes to establish minimum opening bid amounts for Auction 103. Based on the Commission's experience in past auctions, a minimum opening bid amount is an effective bidding tool for accelerating the competitive bidding process. At the beginning of the clock phase, a bidder will indicate how many blocks in a generic license category in a PEA it demands at the minimum opening bid price. For Auction 103, the Commission proposes to establish initial clock prices, or minimum opening bids, as set forth in the following paragraph. The Commission does not propose to establish license-specific reserve prices that are different from minimum opening bid amounts for the licenses to be offered in Auction 103.

63. For Auction 103, the Commission proposes to calculate minimum opening bid amounts using a formula based on bandwidth and license area population, incorporating the same weights it will use in the reconfiguration process and Round Zero to quantify the weighted MHz-pops of an incumbent's spectrum holdings. This is similar to the Commission's approach in many previous spectrum auctions of weighting by an index of relative prices from prior auctions. Since weights are not yet determined, Attachment A of the document lists the MHz-pops of each PEA, and the Commission will update Attachment A with bidding units and upfront payment amounts when the weights are available.

64. The Commission proposes to use a tiered approach, under which minimum opening bid amounts will vary by market population. The Commission proposes minimum

opening bid amounts for a generic block in a PEA based on \$0.002 per weighted MHz-pop for PEAs 1–50, \$0.0004 per weighted MHz-pop for PEAs 51–100, and \$0.0002 per weighted MHz-pop in other PEAs. For informational purposes, Attachment A shows the unweighted MHz-pops per each PEA and the result of multiplying the unweighted MHz-pops by \$0.002, \$0.0004, or \$0.0002 depending on the PEA. The Commission seeks comment on the proposed method for calculating minimum opening bid amounts. If commenters believe that the minimum opening bid amounts will result in unsold licenses or are not reasonable amounts at which to start bidding or as a minimum for incentive payments, they should explain why this is so and comment on the desirability of an alternative approach. Commenters should support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids.

65. In establishing minimum opening bid amounts, the Commission particularly seeks comment on factors that could reasonably have an impact on bidders' valuation of the spectrum, including the type of service offered, market size, population covered, any other relevant factors.

66. Commenters may also wish to address the general role of minimum opening bids in managing the pace of the auction. For example, commenters could compare using minimum opening bids—*e.g.*, by setting higher minimum opening bids to reduce the number of rounds it takes licenses to reach their final prices—to other means of controlling auction pace, such as changes to bidding schedules, percentage increments, or activity requirements.

#### b. Clock Price Increments

67. Under the proposed clock auction format for Auction 103, after bidding in the first round and before each subsequent round, the FCC auction bidding system will announce a clock price for the next round, which is the highest price to which bidders can respond during the round. The Commission proposes to set the clock price for each category in each specific PEA for a round by adding a fixed percentage increment to the price for the previous round. As long as total demand for blocks in a category exceeds the supply of blocks, the percentage increment will be added to the clock price from the prior round. If demand equaled supply at an intra-round bid price in a previous round, then the clock price for the next round will be set

by adding the percentage increment to the intra-round bid price.

68. The Commission proposes to apply an increment that is between 5% and 20% and generally to apply the same increment percentage to all categories in all PEAs. The Commission proposes to set the initial increment within this range, and to adjust the increment as rounds continue. The proposed 5–20% increment range will allow the FCC to set a percentage that manages the auction pace, taking into account bidders' needs to evaluate their bidding strategies while moving the auction along quickly. The Commission also proposes that increments may be changed during the auction on a PEA-by-PEA or category-by-category basis based on bidding activity to assure that the system can offer appropriate price choices to bidders.

#### c. Intra-Round Bids

69. The Commission proposes to permit a bidder to make intra-round bids by indicating a point between the previous round's price and the new clock price at which its demand for blocks in a category changes. In placing an intra-round bid, a bidder would indicate a specific price and a quantity of blocks it demands if the price for blocks in the category should increase beyond that price.

70. Intra-round bids would be optional; a bidder may choose to express its demands only at the clock prices. This proposal to permit intra-round bidding would allow the auction system to use relatively large clock increments, thereby speeding the clock phase, without running the risk that a jump in the clock price will overshoot the market clearing price—the point at which demand for blocks equals the available supply.

#### 10. Changing Demand, Bid Types, and Bid Processing

71. The Commission proposes that the FCC auction bidding system not apply a bidder's request to reduce the quantity of blocks it demands in a category if the reduction will result in aggregate demand falling below the available supply of blocks in the category.

72. Under the ascending clock format proposed for Auction 103, a bidder will indicate in each round the quantity of blocks in each category in each PEA that it demands starting at a given price, indicating that at prices above the bid price it is willing to get the changed quantity. A bidder can express its demands at the clock price or at an intra-round price, and bid quantities can represent an increase or a decrease over

the bidder's previous demands for blocks in a category.

73. If a bidder demands fewer blocks in a category than it did in the previous round, the FCC auction bidding system will treat the bid as a request to reduce demand that will be implemented only if aggregate demand would not fall below the available supply of blocks in the category. In addition, if a bidder demands more blocks in a category than it did in the previous round, the FCC auction bidding system will treat the bid as a request to increase demand that will be implemented only if the bidder has sufficient bidding eligibility to cover the increase.

74. The Commission also proposes to process bids after a round ends in order of price point, where the price point represents the percentage of the bidding interval for the round. Under this proposal, once a round ends, the FCC auction bidding system will process bids in ascending order of price point, first considering intra-round bids in order of price point and then bids at the clock price. The system will consider bids at the lowest price point for all categories in all PEAs, then look at bids at the next price point in all areas, and so on. In processing the bids submitted in the round, the FCC auction bidding system will determine the extent to which there is excess demand for each category in each PEA in order to determine whether a bidder's requested reduction in demand can be implemented.

75. For a given category in a given PEA, the uniform price for all blocks in the category will stop increasing when aggregate demand no longer exceeds the available supply of blocks in the category. If no further bids are placed, the final clock phase price for the category will be the stopped price.

76. In order to facilitate bidding for multiple blocks in a PEA, the Commission proposes that bidders will be permitted to make two types of bids: Simple bids and switch bids.

77. A "simple" bid indicates a desired quantity of licenses in a category at a price (either the clock price or an intra-round price). Simple bids may be applied partially. A simple bid that involves a reduction from the bidder's previous demands may be implemented partially if aggregate excess demand is insufficient to support the entire reduction. A simple bid to increase a bidder's demand in a category may be applied partially if the total number of bidding units associated with the bidder's demand, given all changes in demand that have been applied so far in the bid processing, exceeds the bidder's bidding eligibility for the round.

78. A “switch” bid allows the bidder to request to move its demand for a quantity of licenses from the M/N category to the P category, or vice versa, within the same PEA. A switch bid may be applied partially, but the increase in demand in the “to” category will always match in quantity the reduction in the “from” category.

79. The proposed bid types will allow bidders to express their demand for blocks in the next clock round without running the risk that they will be forced to purchase more spectrum at a higher price than they wish. When a bid to reduce demand can be applied only partially, the uniform price for the category will stop increasing at that point, since the partial application of the bid results in demand falling to equal supply. Hence, a bidder that makes a simple bid or a switch bid that cannot be fully applied will not face a price for the remaining demand that is higher than its bid price.

80. Because in any given round some bidders may increase demands for licenses in a category while others may request reductions, the price point at which a bid is considered by the auction bidding system can affect whether it is applied. In addition to proposing that bids be considered by the system in order of increasing “price point,” the Commission further proposes that bids not applied because of insufficient aggregate demand or insufficient eligibility be held in a queue and considered, again in order, if there should be excess demand (in the case of a bid to reduce demand) or if the bidder’s demand in other categories and PEAs is reduced (in the case of a bid to increase demand) later in the processing after other bids are processed.

81. More specifically, under the proposed procedures, once a round closes, the FCC auction bidding system will process the bids by first considering the bid submitted at the lowest price point and determine whether it can be applied given aggregate demand as determined most recently and given the associated bidder’s eligibility. If the bid can be applied, or partially applied, the number of licenses the bidder demands will be adjusted, and aggregate demand will be recalculated accordingly. If the bid cannot be applied in part or in full, the unfulfilled bid, or portion thereof, will be held in a queue to be considered later during bid processing for that round. The FCC auction bidding system will then consider the bid submitted at the next highest price point, accepting it in full, in part, or not at all, given recalculated aggregate demand and given the associated bidder’s eligibility. Any unfulfilled requests will again be

held in a queue, and aggregate demand will again be recalculated. Every time a bid or part of a bid is applied and aggregate demand has been recalculated, the unfulfilled bids held in queue will be reconsidered, in the order of their original price points (and by pseudo-random number, in the case of tied price points). The auction bidding system will not carry over unfulfilled bid requests to the next round, however. The bidding system will advise bidders of the status of their bids when round results are released.

82. After the bids are processed in each round, the FCC auction bidding system will announce new clock prices to indicate a range of acceptable bid prices for the next round. Each bidder will be informed of the number of blocks in a category on which it holds bids, the aggregate demand for each category in a PEA, and, if demand fell to equal supply during the round, the intra-round price point at which that occurred.

83. *No Bidding Aggregation.* The Commission does not propose to incorporate any form of package bidding procedures into the clock phase of Auction 103. Package bidding would add complexity to the bidding process, and the Commission does not see significant benefit from such procedures, given the proposed clock auction and assignment phase format. A bidder may bid on multiple blocks in a PEA and in multiple PEAs. The Commission proposes that the assignment phase will assign contiguous blocks to winners of multiple blocks in a category in a PEA and give bidders an opportunity to express their preferences for specific frequency blocks, thereby facilitating aggregations of licenses.

84. The Commission seeks comment on its proposals regarding reducing demand, bid types, and bid processing for Auction 103.

#### 11. Winning Bids in the Clock Phase

85. Under the proposed clock auction format for Auction 103, as long as the net revenue requirement has been satisfied, bidders that are still expressing demand for a quantity of blocks in a category in a PEA at the time the stopping rule is met will become the winning bidders and will be assigned specific frequencies in the assignment phase.

#### 12. Bid Removal and Bid Withdrawal

86. The FCC auction bidding system allows each bidder to remove any of the bids it placed in a round before the close of that round. By removing a bid placed within a round, a bidder effectively “unsubmits” the bid. Once a

round closes, a bidder may no longer remove a bid.

87. Unlike an SMR auction, there are no provisionally winning bids in a clock auction. As a result, the concept of bid withdrawals is inapplicable to a clock auction. As proposed, however, bidders in Auction 103 may request to reduce demand for generic blocks.

#### B. Assignment Phase

##### 1. Sequencing and Grouping of PEAs

88. The Commission proposes to sequence assignment rounds to make it easier for bidders to incorporate frequency assignments from previously assigned areas into their bid preferences for other areas, recognizing that bidders winning multiple blocks of licenses generally will prefer contiguous blocks across adjacent PEAs. The Commission proposes to conduct rounds for the largest markets first to enable bidders to establish a “footprint” from which to work.

89. Specifically, the Commission proposes to conduct a separate assignment round for each of the top 20 PEAs and to conduct these assignment rounds sequentially, beginning with the largest PEAs. Once the top 20 PEAs have been assigned, the Commission proposes to conduct, for each Regional Economic Area Grouping (REAG), a series of assignment rounds for the remaining PEAs within that region. The Commission further proposes, where feasible, to group into a single market for assignment any non-top 20 PEAs within a region in which the supply of blocks is the same in each category, the same entities (winning bidders and incumbents keeping modified licenses) need to be assigned the same number of blocks in each category, and all are subject to the small markets bidding cap or all are not subject to the cap, which will also help maximize contiguity across PEAs. The Commission proposes to sequence the assignment rounds within a REAG in descending order of population for a PEA group or individual PEA. The Commission further proposes to conduct the bidding for the different REAGs in parallel in order to reduce the total amount of time required to complete the assignment phase.

90. The Commission seeks comment on these proposals for sequencing assignment rounds, including conducting separate rounds for the top 20 PEAs, and on the proposal to group PEAs for bidding under some circumstances within REAGs.

## 2. Acceptable Bids and Bid Processing

91. In each assignment round, a bidder will be asked to assign a price to one or more possible frequency assignments for which it wishes to express a preference, consistent with its winnings for generic blocks in the clock phase. The price will represent a maximum payment that the bidder is willing to pay, in addition to the base price established in the clock phase for the generic blocks, for the frequency-specific license or licenses in its bid. The Commission proposes that a bidder will submit its preferences for blocks it won in the Upper 37 and 39 GHz bands and the 47 GHz band separately, rather than submitting bids for preferences that include blocks in both categories. That is, if a bidder won one block in category M/N and two blocks in category P, it would not be able to submit a single bid amount for an assignment that included all three blocks. Instead, it would submit its bid or bids for assignments in category M/N separately from its bid or bids for assignments in category P.

92. The Commission proposes to use an optimization approach to determine the winning frequency assignment for each category in each PEA or PEA group. The Commission proposes that the auction system will select the assignment that maximizes the sum of bid amounts among all assignments that satisfy the contiguity requirements. The Commission proposes that the additional price a bidder will pay for a specific frequency assignment (above the base price) will be calculated consistent with a generalized “second price” approach—that is, the winner will pay a price that would be just sufficient to result in the bidder receiving that same winning frequency assignment while ensuring that no group of bidders is willing to pay more for an alternative assignment that satisfies the contiguity restrictions. This price will be less than or equal to the price the bidder indicated it was willing to pay for the assignment. The Commission proposes to determine prices in this way because it facilitates bidding strategy for the bidders, encouraging them to bid their full value for the assignment, knowing that if the assignment is selected, they will pay no more than would be necessary to ensure that the outcome is competitive.

93. The Commission seeks comment on these proposed procedures. In particular, the Commission asks whether bidders would find it useful to be able to submit a single bid for assignments that include frequencies in both categories, in cases where the

bidder won blocks in both category M/N and category P.

## VI. Post-Auction Process

### A. Additional Default Payment Percentage

94. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment by the specified deadline, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under Section 1.2104(g)(2) of the rules. This payment consists of a deficiency payment, equal to the difference between the amount of the bidder’s winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter’s bid or of the subsequent winning bid, whichever is less.

95. The Commission’s rules provide that, in advance of each auction, it will establish a percentage between 3% and 20% of the applicable winning bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

96. For Auction 103, the Commission proposes to establish an additional default payment of 15%, which is consistent with that adopted for Auctions 101 and 102. As noted in the *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional default payment of up to 20% will be more effective in deterring defaults than the 3% used in some earlier auctions. At the same time, the Commission does not believe the detrimental effects of any defaults in Auction 103 are likely to be unusually great. In light of these considerations, the Commission proposes for Auction 103 an additional default payment of 15% of the relevant bid. The Commission seeks comment on this proposal.

97. In case they are needed for post-auction administrative purposes, the bidding system will calculate individual per-license prices that are separate from final auction payments, which are calculated on an aggregate basis. The bidding system will apportion to individual licenses any assignment phase payments and any capped bidding credit discounts, since in both

cases, a single amount may apply to multiple licenses.

## VII. Tutorial and Additional Information for Applicants

98. The Commission intends to provide additional information on the bidding system and to offer demonstrations and other educational opportunities for applicants in Auction 103 to familiarize themselves with the FCC auction application system and the auction bidding system. For example, the Commission intends to release an online tutorial that will help applicants understand the procedures to be followed in the filing of their auction short-form applications (FCC Form 175) for Auction 103.

## VIII. Procedural Matters

99. *Supplemental Initial Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in the document to supplement the Commission’s Initial and Final Regulatory Flexibility Analyses completed in the *Spectrum Frontiers Fourth R&O, 2017 Spectrum Frontiers Order*, 83 FR 37, January 2, 2018, *2016 Spectrum Frontiers Order*, and other Commission orders pursuant to which Auction 103 will be conducted. Written public comments are requested on the Supplemental IRFA. Comments must be identified as responses to the Supplemental IRFA and must be filed by the same deadline for comments on the proposals in the Public Notice. The Commission will send a copy of the Public Notice, including the Supplemental IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the document and Supplemental IRFA (or summaries thereof) will be published in the **Federal Register**.

100. *Need for, and Objectives of, the Proposed Rules*. The document sets forth the proposed auction procedures for those entities that seek to bid to acquire licenses in Auction 103. The document seeks comment on proposed procedural rules to govern Auction 103, which will auction Upper Microwave Flexible Use Service (UMFUS) licenses in the Upper 37 GHz (37.6–38.6 GHz), 39 GHz (38.6–40 GHz), and 47 GHz (47.2–48.2 GHz) bands. This process is intended to provide notice of and adequate time for potential applicants to comment on proposed auction

procedures. To promote the efficient and fair administration of the competitive bidding process for all Auction 103 participants, the Commission seeks comment on the following proposed procedures: (1) Establishment of bidding credit caps for eligible small businesses and rural service providers in Auction 103; (2) use of a clock auction format for Auction 103 under which each qualified bidder will indicate in successive clock bidding rounds its demands for categories of generic blocks in specific geographic areas; (3) a specific minimum opening bid amount for generic blocks in each PEA available in Auction 103; (4) a specific upfront payment amount for generic blocks in each PEA available in Auction 103; (5) establishment of a bidder's initial bidding eligibility in bidding units based on that bidder's upfront payment through assignment of a specific number of bidding units for each generic block; (6) use of an activity rule that would require bidders to bid actively during the auction rather than waiting until late in the auction before participating; (7) a requirement that bidders be active on between 90% and 100% of their bidding eligibility in all regular clock rounds; (8) establishment of acceptable bid amounts, including clock price increments and intra-round bids, along with a proposed methodology for calculating such amounts; (9) a proposed methodology for processing bids and requests to reduce demand; (10) a procedure for breaking ties if identical high bid amounts are submitted on a license in a given round; (11) establishment of an assignment phase that will determine which frequency-specific licenses will be won by the winning bidders of generic blocks during the clock phase; and (12) establishment of an additional default payment of 15% under section 1.2104(g)(2) of the rules in the event that a winning bidder defaults or is disqualified after the auction.

101. The proposed procedures for the conduct of Auction 103 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 30 of the Commission's rules and the underlying rulemaking orders, including the *Spectrum Frontiers Fourth R&O*, *2017 Spectrum Frontiers Order*, *2016 Spectrum Frontiers Order*, and relevant competitive bidding orders, and are fully consistent therewith.

102. *Legal Basis.* The Commission's statutory obligations to small businesses under the Communications Act of 1934, as amended, are found in Sections 309(j)(3)(B) and 309(j)(4)(D). The

statutory basis for the Commission's competitive bidding rules is found in various provisions of the Communications Act of 1934, as amended, including 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, 307, and 309(j). The Commission has established a framework of competitive bidding rules, updated most recently in 2015, pursuant to which it has conducted auctions since the inception of the auction program in 1994 and would conduct Auction 103.

103. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

104. As noted above, Regulatory Flexibility Analyses were incorporated into the *Spectrum Frontiers Fourth R&O*, *2017 Spectrum Frontiers Order*, and *2016 Spectrum Frontiers Order*. In those analyses, the Commission described in detail the small entities that might be significantly affected. In the Public Notice, the Commission incorporates by reference the descriptions and estimates of the number of small entities from the previous Regulatory Flexibility Analyses in the *Spectrum Frontiers Fourth R&O*, *2017 Spectrum Frontiers Order*, and *2016 Spectrum Frontiers Order*.

105. Based on the information available in the Commission's public Universal Licensing System (ULS), the Commission estimates there are currently 16 incumbent 39 GHz licensees. Of these incumbent 39 GHz licensees, the Commission estimates that up to 8 could be considered a "small entity" under the RFA.

106. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.* The Commission designed the auction application process itself to minimize reporting and compliance requirements for applicants, including small business applicants. In the first part of the Commission's two-phased

auction application process, parties desiring to participate in an auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications. Eligibility to participate in bidding is based on an applicant's short-form application and certifications, as well as its upfront payment. In the second phase of the process, winning bidders file a more comprehensive long-form application. Thus, an applicant which fails to become a winning bidder does not need to file a long-form application and provide the additional showings and more detailed demonstrations required of a winning bidder.

107. The Commission does not expect the processes and procedures proposed in the document will require small entities to hire attorneys, engineers, consultants, or other professionals to participate in Auction 103 and comply with the procedures the Commission ultimately adopts because of the information, resources, and guidance the Commission makes available to potential and actual participants. For example, the Commission intends to release an online tutorial that will help applicants understand the procedures for filing of the auction short-form applications (FCC Form 175). The Commission also intends to make information on the bidding system available and offer demonstrations and other educational opportunities for applicants in Auction 103 to familiarize themselves with the FCC auction application system and the auction bidding system. By providing these resources, the Commission expects small business entities who utilize the available resources to experience lower participation and compliance costs.

108. *Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

109. The Commission has taken steps to minimize any economic impact of its auction procedures on small businesses

through among other things, the many resources it provides potential auction participants. Small entities and other auction participants may seek clarification of or guidance on complying with competitive bidding rules and procedures, reporting requirements, and the FCC's auction bidding system. An FCC Auctions Hotline provides access to Commission staff for information about the auction process and procedures. The FCC Auctions Technical Support Hotline is another resource which provides technical assistance to applicants, including small business entities, on issues such as access to or navigation within the electronic FCC Form 175 and use of the FCC's auction bidding system. Small entities may also use the web-based, interactive online tutorial produced by Commission staff to familiarize themselves with auction procedures, filing requirements, bidding procedures, and other matters related to an auction.

110. The Commission also makes various databases and other sources of information, including the Auctions program websites, and copies of Commission decisions, available to the public without charge, providing a low-cost mechanism for small businesses to conduct research prior to and throughout the auction. Prior to and at the close of Auction 103, the Commission will post public notices on the Auctions website, which articulate the procedures and deadlines for the auction. The Commission makes this information easily accessible and without charge to benefit all Auction 103 applicants, including small businesses, thereby lowering their administrative costs to comply with the Commission's competitive bidding rules.

111. Prior to the start of bidding, eligible bidders are given an opportunity to become familiar with auction procedures and the bidding system by participating in a mock auction. Further, the Commission intends to conduct Auction 103 electronically over the internet using its web-based auction system that eliminates the need for bidders to be physically present in a specific location. Qualified bidders also have the option to place bids by telephone. These mechanisms are made available to facilitate participation in Auction 103 by all eligible bidders and may result in significant cost savings for small business entities who use these alternatives. Moreover, the adoption of bidding procedures in advance of the auction, consistent with statutory directive, is designed to ensure that the

auction will be administered predictably and fairly for all participants, including small businesses.

112. For Auction 103, the Commission proposes a \$25 million cap on the total amount of bidding credits that may be awarded to an eligible small business and a \$10 million cap on the total amount of bidding credits that may be awarded to a rural service provider. In addition, the Commission proposes a \$10 million cap on the overall amount of bidding credits that any winning small business bidder may apply to winning licenses in markets with a population of 500,000 or less. Based on the technical characteristics of the UMFUS bands and the Commission's analysis of past auction data, the Commission anticipates that the proposed caps will allow the majority of small businesses to take full advantage of the bidding credit program, thereby lowering the relative costs of participation for small businesses.

113. These proposed procedures for the conduct of Auction 103 constitute the more specific implementation of the competitive bidding rules contemplated by Parts 1 and 30 of the Commission's rules and the underlying rulemaking orders, including the *Spectrum Frontiers Fourth R&O, 2017 Spectrum Frontiers Order, 2016 Spectrum Frontiers Order*, and relevant competitive bidding orders, and are fully consistent therewith.

114. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

115. *Ex Parte Rules.* This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral ex parte presentations must file a copy of any written presentations or memoranda summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine Period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments,

memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to the Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

Federal Communications Commission.

**Marlene Dortch,**  
*Secretary.*

[FR Doc. 2019-09431 Filed 5-7-19; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2 and 95

[ET Docket No. 19-48; DA 19-152]

#### OET Seeks Comment on Modifying the Equipment Authorization Rules To Reflect the Updated Versions of the Currently Referenced ANSI C63.4 and ISO/IEC 17025 Standards

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission's Office of Engineering and Technology (OET) sought comment on updating the Commission's rules and procedures to reflect recent changes to two standards: (1) ANSI C63.4a-2017 "American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz, Amendment 1: Test Site Validation;" and (2) ISO/IEC 17025:2017(E) "General requirements for the competence of testing and calibration laboratories."

**DATES:** Submit comments on or before June 7, 2019 and reply comments on or before June 24, 2019.

**ADDRESSES:** Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties

may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs).

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Documents are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY-A257, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Butler at [Brian.Butler@fcc.gov](mailto:Brian.Butler@fcc.gov), or (202) 418-2702 of the Office of Engineering and Technology.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Office of Engineering and Technology's Public Notice in ET Docket No 19-48, released April 2,

2019. The full text of this document is available at <https://www.fcc.gov/document/oet-seeks-comment-modifying-equipment-authorization-rules>.

ANSI C63.4a-2017 can be purchased from the Institute of Electrical and Electronic Engineers (IEEE), 3916 Ranchero Drive, Ann Arbor, MI 48108, 1-800-699-9277, <http://www.techstreet.com/ieee>; (IEEE publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation ([www.nssn.org](http://www.nssn.org)), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642-4900.

ISO/IEC publications can be purchased from the American National Standards Institute (ANSI) through its NSSN operation ([www.nssn.org](http://www.nssn.org)), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642-4900.

#### Synopsis

As background, the Commission's rules incorporate references to measurement and technical standards that have been established by standards-setting bodies such as American National Standards Institute, Accredited Standards Committee C63SC (ASC63), International Organization for Standardization (ISO), and International Electrotechnical Commission (IEC). The Commission's equipment authorization program for radiofrequency (RF) devices, for example, incorporates such references in § 2.910 of the Commission's rules, 47 CFR. These organizations periodically update their standards to maintain best practices in response to advancements in technologies and measurement capabilities. When these changes are of a substantive nature, the Commission uses the rulemaking process to evaluate whether the changes should be effectuated in its rules.

By the Public Notice (Notice), OET sought comment on updating the Commission's rules and procedures to reflect recent changes to two standards: ANSI C63.4a-2017 "American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz, Amendment 1: Test Site Validation" and ISO/IEC 17025:2017(E) "General requirements for the competence of testing and calibration laboratories." As detailed below, the Notice discussed the role of these standards in the Commission's rules and

it noted the recent changes made by the respective standards bodies.

*ANSI C63.4a-2017.* On November 11, 2018, upon publication of ANSI C63.4a-2017, ASC C63 requested that the Commission take the appropriate steps to reference it in our rules. ASC C63 also submitted a copy of the revised standard to the Commission in conjunction with its petition. As described in ASC C63's filing, the changes resolve certain normalized site attenuation issues (including the measurement of equipment under test that exceeds 2 meters in height) and make a variety of corrections, clarifications and modifications to parts of the standard. Accordingly, in the Notice, OET Commission sought comment on incorporating ANSI C63.4a-2017 into our rules.

*ISO/IEC 17025:2017(E).* In ET Docket No. 13-44, the Commission updated its rules to reference ISO/IEC standards related to the accreditation of Certification Bodies and Testing Laboratories, including ISO/IEC 17025:2005(E). A new version of this standard was published in November 2017, but has yet to be incorporated into the Commission's rules. In addition to adding a definition of "laboratory," this version replaces certain prescriptive requirements with performance-based requirements and allows for greater flexibility in satisfying the standard's requirements for processes, procedures, documented information and organizational responsibilities.

Additionally, ISO and International Laboratory Accreditation Cooperation (ILAC) recently issued a joint communique that re-confirms that a three-year transition period will be allowed for accredited laboratories to transition to the 2017 version of ISO/IEC 17025. While both ISO/IEC 17025:2005(E) and ISO/IEC 17025:2017(E) will be valid during this three-year transition period, accreditations to ISO/IEC 17025:2005(E) will become invalid after November 30, 2020. OET sought comment on incorporating ISO/IEC 17025:2017(E) into the Commission's rules and adopting a three-year transition period, consistent with the ISO and ILAC joint communique.

Federal Communications Commission.

**Julius Knapp,**

*Chief, Office of Engineering and Technology.*

[FR Doc. 2019-09416 Filed 5-7-19; 8:45 am]

**BILLING CODE 6712-01-P**

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 COMMERCE

### Foreign-Trade Zones Board

[B-32-2019]

#### Foreign-Trade Zone (FTZ) 84—Harris County, Texas; Notification of Proposed Production Activity; Coreworks, LLC (Brazed Aluminum Heat Exchangers and Cryogenic Equipment); Katy, Texas

Coreworks, LLC (Coreworks) submitted a notification of proposed production activity to the FTZ Board for its facility in Katy, Texas. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 30, 2019.

The applicant indicates that it will be submitting a separate application for FTZ designation at the Coreworks facility under FTZ 84. The facility is used for the production of brazed aluminum heat exchangers and cryogenic equipment. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Coreworks from customs duty payments on the foreign-status components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Coreworks would be able to choose the duty rates during customs entry procedures that apply to: Brazed aluminum heat exchangers; brazed aluminum heat exchanger parts; and, steel and aluminum cryogenic cold boxes (duty rate ranges from duty-free to 4.2%). Coreworks would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be

deferred or reduced on foreign-status production equipment.

The components and materials sourced from abroad include: Aluminum fin stock; hollow aluminum end bars for core blocks; custom-shape, alloy aluminum end bars for core blocks; aluminum tubing structural shapes and supports; aluminum parting sheets for cores; aluminum braze foils; aluminum header and nozzle pipes; aluminum flanges; stainless steel skid cold box heat exchanger piping; stainless steel skid cold box structures; stainless steel fittings; steel flanges; stainless steel threaded fittings; butt welded fittings; steel forged fittings; vacuum braze furnace vacuum pumps; induction and resistance vacuum braze furnaces; seals, gaskets, pumps, filters and condenser panels for vacuum braze furnaces; die stamping presses; steel process separator drums; and, steel process vessel columns (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is June 17, 2019.

A copy of the notification will be available for public inspection in the "Reading Room" section of the Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Elizabeth Whiteman at [Elizabeth.Whiteman@trade.gov](mailto:Elizabeth.Whiteman@trade.gov) or (202) 482-0473.

Dated: May 3, 2019.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2019-09448 Filed 5-7-19; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-30-2019]

#### Foreign-Trade Zone (FTZ) 20—Norfolk, Virginia; Notification of Proposed Production Activity; STIHL, Incorporated (Outdoor Power Equipment); Virginia Beach, Virginia

STIHL, Incorporated (STIHL) submitted a notification of proposed production activity to the FTZ Board for its facility in Virginia Beach, Virginia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 1, 2019.

STIHL already has authority to produce outdoor power equipment and their parts within Subzone 20E. The current request would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt STIHL from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, STIHL would be able to choose the duty rates during customs entry procedures that apply to: Blowers, trimmers, sprayers, cutters, cultivators, and chainsaws (duty rate ranges from duty-free to 4.7%). STIHL would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include portable sprayers, tool holders, lithium battery primary cells, recorded media, electronic modules, and apparatus for measuring voltage (duty rate ranges from duty-free to 3.9%). The request indicates that lithium battery primary cells will be admitted to the zone in privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items. The request also indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section

301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is June 17, 2019.

A copy of the notification will be available for public inspection in the "Reading Room" section of the Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Juanita Chen at [juanita.chen@trade.gov](mailto:juanita.chen@trade.gov) or 202-482-1378.

Dated: May 2, 2019.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2019-09449 Filed 5-7-19; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-31-2019]

#### Foreign-Trade Zone 134— Chattanooga, Tennessee; Application for Production Authority; Wacker Polysilicon North America, LLC (Polysilicon); Charleston, Tennessee

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Chattanooga Chamber Foundation, grantee of FTZ 134, requesting production authority on behalf of Wacker Polysilicon North America, LLC (Wacker), located in Charleston, Tennessee. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.23) was docketed on May 2, 2019.

Wacker's facility (700 employees, 564 acres) is located within Subzone 134B. The facility is used for the production of polysilicon. Production under FTZ procedures could exempt Wacker from customs duty payments on the foreign components used in export production. The company anticipates that some 90 percent of the plant's shipments will be exported. On its domestic sales, Wacker would be able to choose the duty rates during customs entry procedures that apply to hyperpure polysilicon (duty-free) for the foreign-status input noted below. Wacker would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment. The request indicates that

the savings from FTZ procedures would help improve the plant's international competitiveness.

Material sourced from abroad (representing 10-20% of the value of the finished product) is silicon metal (5.3% duty rate). Wacker is requesting authority subject to a restriction prohibiting the admission of foreign status silicon metal subject to an antidumping or countervailing duty order.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is July 8, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 23, 2019.

A copy of the application will be available for public inspection in the "Reading Room" section of the FTZ Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Elizabeth Whiteman at [ElizabethWhiteman@trade.gov](mailto:ElizabethWhiteman@trade.gov) or (202) 482-0473.

Dated: May 2, 2019.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2019-09446 Filed 5-7-19; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

[B-33-2019]

#### Foreign-Trade Zone (FTZ) 29— Louisville, Kentucky; Notification of Proposed Production Activity; Hitachi Automotive Systems Americas, Inc. (Automotive Components); Harrodsburg and Berea, Kentucky

Hitachi Automotive Systems Americas, Inc. (Hitachi) submitted a notification of proposed production activity to the FTZ Board for its facilities in Harrodsburg and Berea, Kentucky. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 2, 2019.

Hitachi already has authority to produce automotive components within Subzone 29F. The current request

would add foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Hitachi from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below, Hitachi would be able to choose the duty rates during customs entry procedures that apply to the finished products described and approved in prior requests, including: Electric-hybrid drive systems; mass air sensors; throttle bodies and chambers; starter motors; motor/generator units; alternators; distributors; static converters; inverter modules; rotors/stators; batteries; ignition coils; sensors and modules; fuel injectors; emissions control equipment; valves; pumps; automotive battery management systems; fuel rail Assemblies; and, electronic control units for engines and transmissions (duty rate ranges from duty-free to 4.4%). Hitachi would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include cooling sheets and wire harnesses (duty rate ranges from 5 to 5.8%). The request indicates that certain materials/components are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is June 17, 2019.

A copy of the notification will be available for public inspection in the "Reading Room" section of the Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Elizabeth Whiteman at [ElizabethWhiteman@trade.gov](mailto:ElizabethWhiteman@trade.gov) or (202) 482-0473.

Dated: May 3, 2019.  
**Andrew McGilvray,**  
*Executive Secretary.*  
 [FR Doc. 2019-09447 Filed 5-7-19; 8:45 am]  
**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[C-508-813]

**Magnesium From Israel: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of magnesium from Israel. The period of investigation (POI) is January 1, 2017, through December 31, 2017. Interested parties are invited to comment on this preliminary determination.

**DATES:** Effective May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ethan Talbott or Dana Mermelstein, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-1030 or (202) 482-1391, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 20, 2018.<sup>1</sup> Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>2</sup> On February 6, 2019, Commerce postponed

<sup>1</sup> See *Magnesium from Israel: Initiation of Countervailing Duty Investigation*, 83 FR 58529 (November 20, 2018) (*Initiation Notice*).  
<sup>2</sup> See Memorandum from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

the preliminary determination of this investigation until May 2, 2019.<sup>3</sup> For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.<sup>4</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

**Scope of the Investigation**

The product covered by this investigation is magnesium from Israel. For a full description of the scope of this investigation, see Appendix I to this notice.

**Scope Comments**

In accordance with the preamble to Commerce's regulations,<sup>5</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.*, scope).<sup>6</sup> No parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. As such, we have made no modifications to the scope.

**Methodology**

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>7</sup>

<sup>3</sup> See *Magnesium from Israel: Postponement of Preliminary Determination of Countervailing Duty Investigation*, 83 FR 2157 (February 6, 2019).  
<sup>4</sup> See Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Magnesium from Israel," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).  
<sup>5</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).  
<sup>6</sup> See *Initiation Notice*.  
<sup>7</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

**Alignment**

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of Magnesium from Israel based on a request made by the petitioner.<sup>8</sup> Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than September 16, 2019, unless postponed.

**All-Others Rate**

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Commerce calculated an individual estimated countervailable subsidy rate for Dead Sea Magnesium, Ltd. (DSM),<sup>9</sup> the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis*, or based entirely on facts available, the countervailable subsidy rate calculated for DSM is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

**Preliminary Determination**

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Dead Sea Magnesium, Ltd ...	7.48
All Other Companies .....	7.48

**Suspension of Liquidation**

In accordance with section 703(d)(1)(B) and (d)(2) of the Act,

<sup>8</sup> See Letter from the petitioner, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Magnesium From Israel," dated October 24, 2019. The petitioner is US Magnesium LLC.  
<sup>9</sup> As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with DSM: Israel Chemicals Ltd., ICL Israel Ltd., Dead Sea Works Ltd., Dead Sea Bromine Company Ltd., Rotem Amfert Negev Ltd., Bromine Compounds Ltd., and Fertilizers & Chemicals, Ltd.

Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

#### Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

#### Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

#### Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the last verification report is issued in this investigation. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>10</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be

determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

#### International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

#### Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: May 2, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### Scope of the Investigation

The products covered by this investigation are primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by this investigation also includes blends of primary magnesium, scrap, and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, t-bars, rounds, sows, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) products that contain at least 99.95 percent magnesium, by weight (generally referred to as "ultra-pure" or "high purity" magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as "pure" magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, whether or not conforming to an "ASTM Specification for Magnesium Alloy."

The scope of this investigation excludes: (1) magnesium that is in liquid or molten form; and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium

silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nepheline syenite, feldspar, alumina (A12O3), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.

The merchandise subject to this investigation is classifiable under items 8104.11.00, 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

#### Appendix II

##### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope Comments
- IV. Subsidies Valuation
- V. Analysis of Programs
- VI. ITC Notification
- VII. Disclosure and Public Comment
- VIII. Verification
- IX. Conclusion

[FR Doc. 2019-09450 Filed 5-7-19; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-108]

#### Ceramic Tile From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable April 30, 2019.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney, Heather Lui, and William Thompson II, at (202) 482-4475, (202) 482-0016, and (202) 482-7459, respectively, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On April 10, 2019, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) petition concerning imports of ceramic tile from the People's Republic of China (China), filed in proper form on behalf of the Coalition for Fair Trade in Ceramic Tile (the petitioner).<sup>1</sup> The

<sup>1</sup> See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing  
Continued

<sup>10</sup> See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements).

Petition was accompanied by a countervailing duty (CVD) petition concerning imports of ceramic tile from China.

Between April 15 and April 24, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.<sup>2</sup> The petitioner filed responses to these requests between April 17 and April 25, 2019.<sup>3</sup>

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of ceramic tile from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing ceramic tile in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by

Duties on Imports of Ceramic Tile from the People's Republic of China," dated April 10, 2019 (the Petition); *see also* Memorandum, "Decision Memorandum Concerning the Filing Date of the Petitions," dated April 16, 2019.

<sup>2</sup> *See* Commerce's Letters, "Petition for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Supplemental Questions," dated April 15, 2019 (General Issues Supplemental Questionnaire); "Petition for the Imposition of Antidumping Duties on Imports of Ceramic Tile from the People's Republic of China: Supplemental Questions, U.S. Price & Normal Value," dated April 15, 2019 (AD Supplemental Questionnaire); *see also* Memoranda, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated April 16, 2019 (April 16, 2019 Memorandum); "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated April 19, 2019 (April 19, 2019 Memorandum); "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated April 24, 2019 (April 24, 2019 Memorandum).

<sup>3</sup> *See* the Petitioner's Letters, "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Supplemental Questions on the Petition," dated April 17, 2019 (General Issues Supplement); "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Supplemental Questions on the Petition," dated April 17, 2019 (AD Supplemental Response); "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Second Supplemental Questions on General Issues of Petition pertaining to DOC Case Nos. A-570-108 & C-570-109," dated April 22, 2019 (Second General Issues Supplement); "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Third Supplemental Questions on General Issues of Petition pertaining to DOC Case Nos. A-570-108 & C-570-109," dated April 25, 2019 (Third General Issues Supplement).

information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed the Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.<sup>4</sup>

#### Period of Investigation

Because the Petition was filed on April 10, 2019, the period of investigation (POI) is October 1, 2018, through March 31, 2019.<sup>5</sup>

#### Scope of the Investigation

The merchandise covered by this investigation is ceramic tile from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

#### Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>6</sup> As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (*i.e.*, scope).<sup>7</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>8</sup> all such factual information should be limited to public information. To facilitate

<sup>4</sup> *See* "Antidumping Duty Investigation Initiation Checklist: Ceramic Tile from the People's Republic of China," (AD Initiation Checklist). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>5</sup> *See* 19 CFR 351.204(b)(1).

<sup>6</sup> *See* General Issues Supplemental Questionnaire; *see also* April 19, 2019 Memorandum; *see also* April 24, 2019 Memorandum.

<sup>7</sup> *See* *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>8</sup> *See* 19 CFR 351.102(b)(21) (defining "factual information").

preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on May 20, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 30, 2019, which is 10 calendar days from the initial comment deadline.<sup>9</sup>

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent CVD investigation.

#### Filing Requirements

All submissions to Commerce must be filed electronically via ACCESS.<sup>10</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

#### Comments on Product Characteristics for AD Questionnaires

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of ceramic tile to be reported in response to Commerce's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

<sup>9</sup> *See* 19 CFR 351.303(b).

<sup>10</sup> *See* *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); *see also* *Enforcement and Compliance: Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on May 20, 2019, which is 20 calendar days from the signature date of this notice.<sup>11</sup> Any rebuttal comments must be filed by 5:00 p.m. ET on May 30, 2019. All comments and submissions to Commerce must be filed electronically via ACCESS, as explained above, on the record of this AD investigation.

#### Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>12</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information.

Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>13</sup>

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the Petition.<sup>14</sup> Based on our analysis of the information submitted on the record, we have determined that ceramic tile, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>15</sup>

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 shipments of the domestic like product and compared this to the estimated total shipments of the domestic like product for the entire domestic industry.<sup>16</sup> The petitioner estimated the production of the domestic like product for the entire domestic industry based on shipment data, because production data for the entire domestic industry are not available for 2018, and the petitioner has established that shipments are a reasonable proxy for data on production of ceramic tile.<sup>17</sup> We relied on data

<sup>13</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>14</sup> See Volume I of the Petition, at 12–15 and Exhibit I–2–A; see also General Issues Supplement at 7; Second General Issues Supplement at 3–6 and Supplemental Exhibits I–31 and I–32.

<sup>15</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see AD Initiation Checklist at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Ceramic Tile from the People’s Republic of China (Attachment II).

<sup>16</sup> See Volume I of the Petition at 2–5 and Exhibits I–1–A through I–1–F; see also General Issues Supplement at 8–11 and Supplemental Exhibits I–1–E, I–27, and I–28; and Second General Issues Supplement at 6 and Supplemental Exhibit I–1–E.

<sup>17</sup> *Id.*

provided by the petitioner for purposes of measuring industry support.<sup>18</sup>

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.<sup>19</sup> First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>20</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>21</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>22</sup> Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

#### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>23</sup>

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; adverse impact on the domestic industry’s production, capacity utilization, U.S. shipments, employment variables, and financial

<sup>18</sup> *Id.*; see also AD Initiation Checklist at Attachment II.

<sup>19</sup> See AD Initiation Checklist at Attachment II.

<sup>20</sup> See section 732(c)(4)(D) of the Act; see also China AD Initiation Checklist at Attachment II.

<sup>21</sup> See AD Initiation Checklist at Attachment II.

<sup>22</sup> *Id.*

<sup>23</sup> See Volume I of the Petition at 22–23 and Exhibit I–9.

<sup>11</sup> See 19 CFR 351.303(b).

<sup>12</sup> See section 771(10) of the Act.

performance; underselling and price depression or suppression; lost sales and revenues; negative impact on the domestic industry's return on investments; the cancellation or postponement of expansion projects for U.S. production facilities; reduced spending on research and development; and an increase in end-of-year production inventories.<sup>24</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>25</sup>

#### Allegations of Sales at Less Than Fair Value

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation on imports of ceramic tile from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

#### Export Price

The petitioner based the U.S. price on export price (EP) using average unit values (AUVs) of publicly available import data.<sup>26</sup> Where applicable, the petitioner made deductions from U.S. price for foreign inland freight and foreign brokerage and handling charges.<sup>27</sup>

#### Normal Value

With respect to China, Commerce considers China to be a non-market economy (NME) country.<sup>28</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce.

<sup>24</sup> See Volume I of the Petition at 17–50 and Exhibits I–6, I–8 through I–22 and I–24 through I–26; see also General Issues Supplement at 11 and Exhibit I–29.

<sup>25</sup> See AD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Ceramic Tile from the People's Republic of China (Attachment III).

<sup>26</sup> See AD Initiation Checklist.

<sup>27</sup> *Id.*

<sup>28</sup> See *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017), and accompanying decision memorandum, *China's Status as a Non-Market Economy*, unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value*, 83 FR 9282 (March 5, 2018).

Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.<sup>29</sup>

The petitioner contends that Mexico is an appropriate surrogate country for China because it is a market economy country that is at a level of economic development comparable to that of China, it is a significant producer of comparable merchandise, and public information from Mexico is available to value all material input factors.<sup>30</sup> Based on the information provided by the petitioner, we determine that it is appropriate to use Mexico as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 30 days before the scheduled date of the preliminary determination.

#### Factors of Production

Because information regarding the volume of inputs consumed by the Chinese producers/exporters was not reasonably available, the petitioner relied on the production experience for one of the members of the petitioning coalition as a surrogate to estimate the Chinese manufacturers' FOPs.<sup>31</sup> The petitioner valued the estimated FOPs using surrogate values from Mexico and used the average POI exchange rate to convert the data to U.S. dollars.<sup>32</sup> The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Mexican producer of ceramic tile.<sup>33</sup>

#### Fair Value Comparisons

Based on the data provided in the Petition, there is reason to believe that imports of ceramic tile from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margin for ceramic tile from China range from 127.33 to 356.02 percent.<sup>34</sup>

<sup>29</sup> See AD Initiation Checklist.

<sup>30</sup> See Volume II of the Petition at 2–4.

<sup>31</sup> See AD Initiation Checklist.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

#### Initiation of LTFV Investigation

Based upon the examination of the Petition on ceramic tile from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of ceramic tile from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

#### Respondent Selection

The petitioner named 197 producers/exporters of ceramic tile in China.<sup>35</sup> After considering our resources, Commerce has determined that we do not have sufficient administrative resources to issue quantity and value (Q&V) questionnaires to all 197 identified producers and exporters. Therefore, Commerce has determined to limit the number of Q&V questionnaires it will send out to exporters and producers identified in U.S. Customs and Border Protection (CBP) data for U.S. imports of ceramic tile during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the "Scope of the Investigation," in the Appendix. Accordingly, Commerce will send Q&V questionnaires to the largest producers and exporters that are identified in the CBP data for which there is address information on the record.

On April 30, 2019, Commerce released CBP data under Administrative Protection Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data must do so within three business days of the publication date of the notice of initiation of this investigation.<sup>36</sup> We further stated that we will not accept rebuttal comments.

In addition, Commerce will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance website at <http://www.trade.gov/enforcement/news.asp>. In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to base respondent selection on the responses to the Q&V questionnaire that we receive.

<sup>35</sup> See Volume I of the Petition at Exhibit I–5.

<sup>36</sup> See Memorandum, "Ceramic Tile from China: U.S. Customs and Border Protection Data for Respondent Selection Purposes," dated April 30, 2019.

Producers/exporters of ceramic tile from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance website. The Q&V response must be submitted by the relevant China exporters/producers no later than 5:00 p.m. ET on May 20, 2019. All Q&V responses must be filed electronically via ACCESS.

### Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application.<sup>37</sup> The specific requirements for submitting a separate-rate application in the China investigation are outlined in detail in the application itself, which is available on Commerce's website at <http://enforcement.trade.gov/nme/nme-sep-rate.html>. The separate-rate application will be due 30 days after publication of this initiation notice.<sup>38</sup> Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. Companies not filing a timely Q&V response will not receive separate-rate consideration.

### Use of Combination Rates

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well

<sup>37</sup> See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation Involving Non-Market Economy Countries (April 5, 2005), available at <http://enforcement.trade.gov/policy/bull05-1.pdf> (Policy Bulletin 05.1).

<sup>38</sup> Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that "the Secretary may request any person to submit factual information at any time during a proceeding," this deadline is now 30 days.

as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.<sup>39</sup>

### Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to China via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

### ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of ceramic tile from China are materially injuring, or threatening material injury to, a U.S. industry.<sup>40</sup> A negative ITC determination will result in the investigation being terminated.<sup>41</sup> Otherwise, this investigation will proceed according to statutory and regulatory time limits.

### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>42</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or

<sup>39</sup> See Policy Bulletin 05.1 at 6 (emphasis added).

<sup>40</sup> See section 733(a)(2) of the Act.

<sup>41</sup> See section 733(a)(1) of the Act.

<sup>42</sup> See 19 CFR 351.301(b).

correct.<sup>43</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>44</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>45</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

<sup>43</sup> See 19 CFR 351.301(b)(2).

<sup>44</sup> See section 782(b) of the Act.

<sup>45</sup> See also *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: April 30, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

### Appendix—Scope of the Investigation

The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes ceramic tile “slabs” or “panels” (tiles that are larger than 1 meter<sup>2</sup> (11 ft.<sup>2</sup>)).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: Beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000,

6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

[FR Doc. 2019–09451 Filed 5–7–19; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–533–867]

### Welded Stainless Pressure Pipe From India: Final Results of Antidumping Duty Administrative Review; 2016–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that producers/exporters subject to this review made sales of subject merchandise at less than normal value during the May 10, 2016, through October 31, 2017, period of review (POR).

**DATES:** Effective May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:** Laurel LaCivita or Stephanie Berger, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243 and (202) 482–2483, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

Commerce published the *Preliminary Results* of this administrative review of the antidumping duty (AD) order on welded stainless pressure pipe (WSPP) from India on December 12, 2018.<sup>1</sup> We invited interested parties to comment on the *Preliminary Results*; however, no interested party submitted comments. Commerce conducted this administrative review in accordance

<sup>1</sup> See *Welded Stainless Pressure Pipe from India: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 63827 (December 12, 2018) (*Preliminary Results*) and accompanying memorandum, “Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Welded Stainless Pressure Pipe from India: 2016–2017,” dated December 3, 2018 (PDM).

with sections 751(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act).

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>2</sup> If the new deadline falls on a non-business day, in accordance with Commerce’s practice, the deadline will become the next business day. The revised deadline for the final results of this administrative review is now May 13, 2019.

### Scope of the Order

The merchandise covered by this order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. For purposes of this scope, references to size are in nominal inches and include all products within tolerances allowed by pipe specifications. This merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005, 7306.40.5040, 7306.40.5062, 7306.40.5064, and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (HTSUS). They may also enter under HTSUS subheadings 7306.40.1010, 7306.40.1015, 7306.40.5042, 7306.40.5044, 7306.40.5080, and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of this order is dispositive.<sup>3</sup>

### Changes Since the Preliminary Results

As no parties submitted comments on the *Preliminary Results*, we made no changes in the final results of this review.

### Final Results of the Review

Commerce determines that the following weighted-average dumping

<sup>2</sup> See memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>3</sup> For the full text of the scope of the order, see the PDM.

margins exist for the May 10, 2016, through October 31, 2017 POR:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Bhandari Foils & Tubes, Ltd .....	7.19
Hindustan Inox, Ltd .....	2.03
Apex Tubes Private Ltd .....	43.89
Apurvi Industries .....	3.89
Arihant Tubes .....	3.89
Divine Tubes Pvt. Ltd .....	3.89
Heavy Metal & Tubes .....	3.89
J.S.S. Steelitalia Ltd .....	3.89
Linkwell Seamless Tubes Private Limited .....	3.89
Maxim Tubes Company Pvt. Ltd .....	3.89
MBM Tubes Pvt. Ltd .....	3.89
Mukat Tanks & Vessel Ltd .....	3.89
Neotiss Ltd .....	3.89
Prakash Steelage Ltd .....	3.89
Quality Stainless Pvt. Ltd .....	3.89
Raajratna Metal Industries Ltd ...	3.89
Ratnadeep Metal & Tubes Ltd ...	3.89
Ratnamani Metals & Tubes Ltd ..	3.89
Remi Edelstahl Tubulars .....	3.89
Shubhlaxmi Metals & Tubes Private Limited .....	3.89
SLS Tubes Pvt. Ltd .....	3.89
Steamline Industries Ltd .....	3.89

#### Assessment Rates

Pursuant to the final results of this review, Commerce determines, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b).

For the mandatory respondents (*i.e.*, Bhandari Foils & Tubes, Ltd. (Bhandari) and Hindustan Inox, Ltd. (Hindustan)), as the weighted-average dumping margins are not zero or *de minimis* (*i.e.*, less than 0.5 percent), we calculated importer-specific *ad valorem* AD assessment rates based on the ratio of the total amount of dumping calculated for the importers' examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).<sup>5</sup>

<sup>4</sup> This rate is based on the rates for the respondents that were selected for individual review, excluding rates that are zero, *de minimis* or based entirely on facts available. See section 735(c)(5)(A) of the Act; see also memorandum, "Welded Stainless Pressure Pipe from India: Calculation of the All-Others Rate in the Preliminary Results of Antidumping Duty Administrative Review; 2016–2017," dated December 3, 2018.

<sup>5</sup> In these preliminary results, Commerce applied the assessment rate calculation method adopted in Antidumping Proceedings. See *Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

For the companies which were not selected for individual review, we will assign an assessment rate based on the weighted average of the cash deposit rates calculated for the companies selected for individual review (*i.e.*, Bhandari and Hindustan).

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by each respondent for which they did not know that their merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate of 8.35 percent if there is no rate for the intermediate company(ies) involved in the transaction.<sup>6</sup>

We intend to issue instructions to CBP 15 days after publication of these final results of this review in the **Federal Register**.

#### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review in the **Federal Register** for all shipments of WSPP from India entered, or withdrawn from warehouse, for consumption on or after the date of publication provided by section 751(a)(2) of the Act: (1) The cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.35 percent, the all-others rate established in the antidumping investigation.<sup>7</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility

<sup>6</sup> See *Welded Stainless Pressure Pipe From India: Antidumping Duty and Countervailing Duty Orders*, 81 FR 81062 (November 17, 2016).

<sup>7</sup> *Id.*

under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

#### Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the 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/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: May 1, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2019-09453 Filed 5-7-19; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-520-803]

#### Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that JBF RAK LLC (JBF) made sales of subject merchandise at less than normal value during the period of review (POR), November 1, 2016, through October 31, 2017.

**DATES:** May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:**

Andrew Huston, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4261.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce published the preliminary results of this administrative review on December 7, 2018.<sup>1</sup> We invited interested parties to comment on the *Preliminary Results*. Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.<sup>2</sup> This extended the deadline for the final results to May 16, 2019. On February 19, 2019, Commerce received a case brief from DuPont Teijin Film, Mitsubishi Polyester Film, Inc., and SKC Inc. (collectively, the petitioners).<sup>3</sup> No party filed a rebuttal brief.

**Scope of the Order**

The products covered by the order are all gauges of raw, pre-treated, or primed polyethylene terephthalate film (PET Film), whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET Film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

<sup>1</sup> See *Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 63157 (December 7, 2018) (*Preliminary Results*).

<sup>2</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

<sup>3</sup> See "Polyethylene Terephthalate Film, Sheet and Strip from the United Arab Emirates: Petitioners' Case Brief," dated February 19, 2019.

**Analysis of Comments Received**

All issues raised in the sole case brief filed in this review are addressed in the Issues and Decision Memorandum.<sup>4</sup> A list of the topics discussed in the Issues and Decision Memorandum is appended to this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>, and it is available to all parties in the Central Records Unit of the main Commerce Building, Room B-8024. In addition, a complete version of the Issues and Decision Memorandum is also accessible on the internet at <http://enforcement.trade.gov/frn/index.html>. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of the comments received, we made changes to our margin calculations for JBF. Specifically, we revised our calculation of per-unit cost adjustments for direct labor, variable overhead and fixed overhead costs.<sup>5</sup> A complete discussion of this change can be found in the Issues and Decision Memorandum.

**Final Results of Review**

As a result of this review, we determine that the following weighted-average dumping margin for the manufacturer/exporter listed below exists for the period of November 1, 2016, through October 31, 2017:

Manufacturer/exporter	Weighted-average dumping margin (percent <i>ad valorem</i> )
JBF RAK LLC .....	70.75

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate

<sup>4</sup> See Memorandum, "Antidumping Duty Administrative Review of Polyethylene Terephthalate Film, Sheet, and Strip from the United Arab Emirates: Issues and Decision Memorandum for the Final Results; 2016-2017" (Issues and Decision Memorandum), dated concurrently with and hereby adopted by this notice.

<sup>5</sup> See Issues and Decision Memorandum at 2-3.

entries of subject merchandise in accordance with the final results of this review.<sup>6</sup> Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of these final results of review.

For JBF, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to continue to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis*. Where an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, were applicable.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) For JBF, the cash deposit rate will be equal to the weighted-average dumping margin listed above in the "Final Results of Review" section; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previously completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the final results for the most recent period in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, then the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final results for the most recent period in which that producer participated; and

<sup>6</sup> Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

(4) if neither the exporter nor the producer is a firm covered in this review or in any previously completed segment of this proceeding, then the cash deposit rate will be 4.05 percent, the all-others rate established in the less than fair value investigation.<sup>7</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Disclosure

We will disclose to interested parties the calculations performed in connection with these final results within five days of the publication of this notice, consistent with 19 CFR 351.224(b).

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Administrative Protective Order

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the 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 the terms of an APO is a violation subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: May 1, 2019.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of Comment
- Comment: JBF's Cost of Production
- V. Recommendation

[FR Doc. 2019-09454 Filed 5-7-19; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-109]

#### Ceramic Tile From the People's Republic of China: Initiation of Countervailing Duty Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable April 30, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Yasmin Bordas at (202) 482-3813; Moses Song at (202) 482-7885; John McGowan at (202) 492-3019, respectively; AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On April 10, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) Petition concerning imports of ceramic tile from the People's Republic of China (China), filed in proper form on behalf of the Coalition for Fair Trade in Ceramic Tile (the petitioner).<sup>1</sup> The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of ceramic tile from China.

Between April 15 and 24, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.<sup>2</sup> The petitioner filed

responses to these requests between April 17 and April 25, 2019.<sup>3</sup>

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of ceramic tile in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing ceramic tile in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry, because the petitioner is an interested party, as defined in section 771(9)(E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry

Duties on Imports of Ceramic Tile from the People's Republic of China: Supplemental Questions," dated April 15, 2019 (General Issues Supplemental Questionnaire); "Petition for the Imposition of Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Supplemental Questions," dated April 15, 2019 (CVD Supplemental Questionnaire); *see also* Memoranda, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated April 16, 2019 (April 16, 2019 Memorandum); "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated April 19, 2019 (April 19, 2019 Memorandum); and "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China: Phone Call with Counsel to the Petitioner," dated April 24, 2019 (April 24, 2019 Memorandum).

<sup>3</sup> *See* the Petitioner's Letters, "Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Supplemental Questions on the Petition," dated April 17, 2019 (General Issues Supplement); "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Supplemental Questions on the Petition," dated April 17, 2019 (CVD Supplement Response); "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Second Supplemental Questions on General Issues of Petition pertaining to DOC Case Nos. A-570-108 & C-570-109," dated April 22, 2019 (Second General Issues Supplement); and "Antidumping and Countervailing Duty Investigation of Ceramic Tile from the People's Republic of China: FTCT's Response to the Department's Third Supplemental Questions on General Issues of Petition pertaining to DOC Case Nos. A-570-108 & C-570-109," dated April 25, 2019 (Third General Issues Supplement).

<sup>7</sup> *See Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, the People's Republic of China and the United Arab Emirates: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value for the United Arab Emirates*, 73 FR 66595, 66596 (November 10, 2008).

<sup>1</sup> *See* Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Ceramic Tile from the People's Republic of China," dated April 10, 2019 (the Petition); *see also* Memorandum, "Decision Memorandum Concerning the Filing Date of the Petitions," dated April 16, 2019.

<sup>2</sup> *See* Commerce's Letters, "Petitions for the Imposition of Antidumping and Countervailing

support with respect to the initiation of the requested CVD investigation.<sup>4</sup>

### Period of Investigation

Because the Petition was filed on April 10, 2019, the period of investigation (POI) is January 1, 2018, through December 31, 2018.<sup>5</sup>

### Scope of the Investigation

The merchandise covered by this investigation consists of ceramic tile from China. For a full description of the scope of this investigation, see the Appendix to this notice.

### Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.<sup>6</sup> As a result, the scope of the Petition was modified to clarify the description of merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).<sup>7</sup> Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,<sup>8</sup> all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on May 20, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on May 30, 2019, which

is 10 calendar days from the initial comment deadline.<sup>9</sup>

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such submissions must be filed on the records of the concurrent AD investigation.

### Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).<sup>10</sup> An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

### Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified China of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.<sup>11</sup> China did not request consultations.

### Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25

percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,<sup>12</sup> they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.<sup>13</sup>

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation.<sup>14</sup> Based on our analysis of

<sup>4</sup> See "Countervailing Duty Investigation Initiation Checklist: Ceramic Tile from the People's Republic of China (CVD Initiation Checklist). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>5</sup> See 19 CFR 351.204(b)(1).

<sup>6</sup> See April 16, 2019 Memorandum; April 19, 2019 Memorandum; and April 24, 2019 Memorandum.

<sup>7</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>8</sup> See 19 CFR 351.102(b)(21) (defining "factual information").

<sup>9</sup> See 19 CFR 351.303(b).

<sup>10</sup> See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

<sup>11</sup> See Commerce Letter, "Countervailing Duty Petition on Ceramic Tile from the People's Republic of China: Invitation for Consultations to Discuss the Petition" dated April 15, 2019.

<sup>12</sup> See section 771(10) of the Act.

<sup>13</sup> See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

<sup>14</sup> See Volume I of the Petition, at 12–15 and Exhibit I–2–A; see also General Issues Supplement,

the information submitted on the record, we have determined that ceramic tile, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.<sup>15</sup>

In determining whether the petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 shipments of the domestic like product and compared this to the estimated total shipments of the domestic like product for the entire domestic industry.<sup>16</sup> The petitioner estimated the production of the domestic like product for the entire domestic industry based on shipment data, because production data for the entire domestic industry are not available for 2018, and the petitioner has established that shipments are a reasonable proxy for data on production of ceramic tile.<sup>17</sup> We relied on data provided by the petitioner for purposes of measuring industry support.<sup>18</sup>

Our review of the data provided in the Petition, the General Issues Supplement, the Second General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.<sup>19</sup> First, the Petition established support from

at 7; *see also* Second General Issues Supplement, at 3–6 and Supplemental Exhibits I–31 and I–32.

<sup>15</sup> For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, *see* Countervailing Duty Investigation Initiation Checklist: Ceramic Tile from the People’s Republic of China (China CVD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petition Covering Ceramic Tile from the People’s Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

<sup>16</sup> *See* Volume I of the Petition, at 2–5 and Exhibits I–1–A through I–1–F; *see also* General Issues Supplement, at 8–11 and Supplemental Exhibits I–1–E, I–27, and I–28; *see also* Second General Issues Supplement, at 6 and Supplemental Exhibit I–1–E.

<sup>17</sup> *Id.*, at 3–5 and Exhibits I–1–C through I–1–F; *see also* General Issues Supplement, at 8–10 and Supplemental Exhibits I–1–E, I–27, and I–28; *see also* Second General Issues Supplement, at 6 and Supplemental Exhibit I–1–E.

<sup>18</sup> *See* Volume I of the Petition, at 2–5 and Exhibits I–1–A through I–1–F; *see also* General Issues Supplement, at 8–11 and Supplemental Exhibits I–1–E, I–27, and I–28; *see also* Second General Issues Supplement, at 6 and Supplemental Exhibit I–1–E. For further discussion, *see* China CVD Initiation Checklist, at Attachment II.

<sup>19</sup> *See* CVD Initiation Checklist, at Attachment II.

domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).<sup>20</sup> Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.<sup>21</sup> Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.<sup>22</sup> Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

#### Injury Test

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

#### Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.<sup>23</sup>

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; adverse impact on the domestic industry’s production, capacity utilization, U.S. shipments, employment variables, and financial performance; underselling and price depression or suppression; lost sales

and revenue; negative impact on the domestic industry’s return on investments; the cancellation or postponement of expansion projects for U.S. production facilities; reduced spending on research and development; and an increase in end-of-year production inventories.<sup>24</sup> We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.<sup>25</sup>

#### Initiation of CVD Investigation

Based on the examination of the Petition, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a CVD investigation to determine whether imports of ceramic tile from China benefit from countervailable subsidies conferred by the Government of China. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation, in whole or part, on each of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* China CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

#### Respondent Selection

The petitioner named 197 companies as producers/exporters of ceramic tile in China.<sup>26</sup> Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce’s resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of ceramic tile from China during the POI under

<sup>24</sup> *See* Volume I of the Petition, at 17–50 and Exhibits I–6, I–8 through I–22 and I–24 through I–26; *see also* General Issues Supplement, at 11 and Exhibit I–29.

<sup>25</sup> *See* CVD Initiation Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Ceramic Tile from the People’s Republic of China (Attachment III).

<sup>26</sup> *See* Volume I of the Petitions, at 16 and Exhibit I–5.

<sup>20</sup> *Id.*; *see also* section 702(c)(4)(D) of the Act.

<sup>21</sup> *See* CVD Initiation Checklist, at Attachment II.

<sup>22</sup> *Id.*

<sup>23</sup> *See* Volume I of the Petition, at 22–23 and Exhibit I–9.

the appropriate Harmonized Tariff Schedule of the United States numbers listed in the “Scope of the Investigation,” in the Appendix.

On April 30, 2019, Commerce released CBP data on imports of ceramic tile from China under Administrative Protective Order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment regarding the CBP data and respondent selection must do so within three business days of the publication date of the notice of initiation of this investigation.<sup>27</sup> We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce’s website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

#### Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to China via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

#### ITC Notification

We will notify the ITC of our initiation, as required by section 702(d) of the Act.

#### Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of ceramic tile from China are materially injuring, or threatening material injury to, a U.S. industry.<sup>28</sup> A negative ITC determination will result in the investigation being terminated.<sup>29</sup> Otherwise, this investigation will

<sup>27</sup> See Memorandum, “Ceramic Tile from the People’s Republic of China—Release of Customs Data,” dated April 30, 2019.

<sup>28</sup> See section 703(a)(2) of the Act.

<sup>29</sup> See section 703(a)(1) of the Act.

proceed according to statutory and regulatory time limits.

#### Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted<sup>30</sup> and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.<sup>31</sup> Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Interested parties should review the regulations prior to submitting factual information in this investigation.

#### Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790

<sup>30</sup> See 19 CFR 351.301(b).

<sup>31</sup> See 19 CFR 351.301(b)(2).

(September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting factual information in this investigation.

#### Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.<sup>32</sup> Parties must use the certification formats provided in 19 CFR 351.303(g).<sup>33</sup> Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

#### Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: April 30, 2019.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### Scope of the Investigation

The merchandise covered by this investigation is ceramic flooring tile, wall tile, paving tile, hearth tile, porcelain tile, mosaic tile, flags, finishing tile, and the like (hereinafter ceramic tile). Ceramic tiles are articles containing a mixture of minerals including clay (generally hydrous silicates of alumina or magnesium) that are fired so the raw materials are fused to produce a finished good that is less than 3.2 cm in actual thickness. All ceramic tile is subject to the scope regardless of end use, surface area, and weight, regardless of whether the tile is glazed or unglazed, regardless of the water absorption coefficient by weight, regardless of the extent of vitrification, and regardless of whether or not the tile is on a backing. Subject merchandise includes ceramic tile with decorative features that may in spots exceed 3.2 cm in thickness and includes

<sup>32</sup> See section 782(b) of the Act.

<sup>33</sup> See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at [http://enforcement.trade.gov/tlei/notices/factual\\_info\\_final\\_rule\\_FAQ\\_07172013.pdf](http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf).

ceramic tile “slabs” or “panels” (tiles that are larger than 1 meter<sup>2</sup> (11 ft.<sup>2</sup>)).

Subject merchandise includes ceramic tile that undergoes minor processing in a third country prior to importation into the United States. Similarly, subject merchandise includes ceramic tile produced that undergoes minor processing after importation into the United States. Such minor processing includes, but is not limited to, one or more of the following: Beveling, cutting, trimming, staining, painting, polishing, finishing, additional firing, or any other processing that would otherwise not remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.

Subject merchandise is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheadings of heading 6907: 6907.21.1005, 6907.21.1011, 6907.21.1051, 6907.21.2000, 6907.21.3000, 6907.21.4000, 6907.21.9011, 6907.21.9051, 6907.22.1005, 6907.22.1011, 6907.22.1051, 6907.22.2000, 6907.22.3000, 6907.22.4000, 6907.22.9011, 6907.22.9051, 6907.23.1005, 6907.23.1011, 6907.23.1051, 6907.23.2000, 6907.23.3000, 6907.23.4000, 6907.23.9011, 6907.23.9051, 6907.30.1005, 6907.30.1011, 6907.30.1051, 6907.30.2000, 6907.30.3000, 6907.30.4000, 6907.30.9011, 6907.30.9051, 6907.40.1005, 6907.40.1011, 6907.40.1051, 6907.40.2000, 6907.40.3000, 6907.40.4000, 6907.40.9011, and 6907.40.9051. Subject merchandise may also enter under subheadings of headings 6914 and 6905: 6914.10.8000, 6914.90.8000, 6905.10.0000, and 6905.90.0050. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

[FR Doc. 2019-09452 Filed 5-7-19; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Proposed Information Collection; Comment Request; NIST Associates Information System

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before July 8, 2019.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer,

Department of Commerce, Room 6616, 1401 Constitution Avenue NW, Washington, DC 20230 (or via the internet at [docpra@doc.gov](mailto:docpra@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Mary Clague, 301-975-4188, [mary.clague@nist.gov](mailto:mary.clague@nist.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

NIST Associates (NA) will include guest researchers, research associates, contractors, and other non-NIST employees that require access to NIST campuses or NIST resources. The NIST Associates Information System (NAIS) information collection instrument(s) are completed by the incoming NAs. The NAs will be requested to provide personal identifying data including home address, date and place of birth, employer name and address, and basic security information. The data provided by the collection instruments will be input into NAIS, which automatically populates the appropriate forms, and is routed through the approval process. NIST's Office of Security receives security forms through the NAIS process and is able to allow preliminary access to NAs to the NIST campuses or resources. The data collected will also be the basis for further security investigations as necessary.

##### II. Method of Collection

The information is collected in paper format.

##### III. Data

*OMB Control Number:* 0693-0067.

*Form Number(s):* None.

*Type of Review:* Revision and extension of a current information collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 4,000.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,000.

*Estimated Total Annual Cost to Public:* \$0.

##### IV. Request for Comments

NIST invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2019-09458 Filed 5-7-19; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XG959

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Training and Testing Activities in the Hawaii-Southern California Training and Testing Study Area

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

**ACTION:** Notice; receipt of application for regulations and Letters of Authorization extension; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) to extend the expiration date from December 2023 to December 2025 for Marine Mammal Protection Act (MMPA) regulations authorizing the take of marine mammals incidental to Navy training and testing activities conducted in the Hawaii-Southern California Training and Testing (HSTT) Study Area. In August 2018, the MMPA was amended by the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 to allow for seven-year authorizations for military readiness activities, as compared to the previously allowed five years. The Navy's activities qualify as military readiness activities pursuant to the MMPA as amended by the NDAA for Fiscal Year 2004. In making the request to extend the time period covered by the MMPA 2018 HSTT regulations from five to seven years, the Navy proposes no changes to their specified activities, the

geographical region in which those activities would be conducted, mitigation measures, monitoring, or reporting over the longer seven-year period. NMFS invites the public to provide information, suggestions, and comments on the Navy's application.

**DATES:** Comments and information must be received no later than June 7, 2019.

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to [ITP.Piniak@noaa.gov](mailto:ITP.Piniak@noaa.gov).

**Instructions:** NMFS is not responsible for information or comments sent by any other method, to any other address or individual, or received after the end of the comment period. Information and comments received electronically, including all attachments, must not exceed a 25-megabyte file size.

Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All information and comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Wendy Piniak, Office of Protected Resources, NMFS, (301) 427-8401. An electronic copy of the Navy's application may be obtained online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-military-readiness-activities>. In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is

limited to harassment, a notice of a proposed authorization is provided to the public for review and the opportunity to submit comments.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

The NDAA for Fiscal Year 2004 (2004 NDAA) (Pub. L. 108-136) amended section 101(a)(5) of the MMPA to remove the "small numbers" and "specified geographical region" provisions indicated above and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA): (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A Harassment); or (ii) Any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered (Level B Harassment). In addition, the 2004 NDAA amended the MMPA as it relates to military readiness activities such that least practicable adverse impact shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

More recently, section 316 of the NDAA for Fiscal Year 2019 (2019 NDAA) (Pub. L. 115-232), signed on August 13, 2018, amended the MMPA to allow incidental take rules for military readiness activities under section 101(a)(5)(A) to be issued for up to seven years. Prior to this amendment, all incidental take rules under section 101(a)(5)(A) were limited to five years.

**Summary of Request**

On March 11, 2019, NMFS received an adequate and complete application from the Navy requesting that NMFS extend the 2018 HSTT regulations (83 FR 66846) and associated Letters of Authorization (LOAs) such that they would cover take incidental to seven years of training and testing activities instead of five, extending the expiration date from December 20, 2023 to December 20, 2025. The extension would be conducted through a proposed and final rulemaking analyzing seven years of activity, consistent with the requirements of section 101(a)(5)(A). Specifically, the activities include training and testing (all categorized as military readiness activities) including the use of active acoustic sonar systems and other transducers, in-water detonations, air guns, construction activities involving pile removal and installation, and the operation of a fleet of vessels throughout the HSTT Study Area. These activities may result in the incidental take of marine mammals in the form of Level B harassment (behavioral disruption or temporary hearing impairment), Level A harassment (permanent hearing impairment or tissue damage), or serious injury or mortality in a very small number of cases.

**Description of Activity**

In its 2019 application, the Navy proposes no changes to the nature of the specified activities covered by the 2018 HSTT final rule, the level of activity within and between years would be consistent with that previously analyzed in the 2018 HSTT final rule and all activities would be conducted within the same boundaries of the HSTT Study Area identified in the 2018 HSTT final rule. Therefore, the training and testing activities (e.g., equipment and sources used, exercises conducted) and the mitigation, monitoring, and reporting measures are identical to those described and analyzed in the 2018 HSTT final rule. The only changes included in the Navy's request are to conduct those same activities in the same region for an additional two years. In its request, the Navy included all information necessary to identify the type and amount of incidental take that may occur in the two additional years so NMFS could determine whether the analyses and conclusions regarding the impacts of the proposed activities on marine mammal species and stocks previously reached for five years of activities remain the same for seven years of identical activity.

Regarding the quantification of expected takes from acoustic and explosive sources (by Level A harassment and Level B harassment, as well as mortality resulting from exposure to explosives), the number of takes are based directly on the level of activities (days, hours, counts, etc., of different activities and events) in a given year. In the 2018 HSTT final rule, take estimates across the five-years were based on the Navy conducting three years of a representative level of activity and two years of maximum level of activity. Consistent with the pattern set forth in the 2017 application, the 2018 HSTT Final Environmental Impact Statement/Overseas Environmental Impact Statement (FEIS/OEIS, [www.hstteis.com/](http://www.hstteis.com/)), and the 2018 HSTT final rule, the Navy proposes to add one additional representative year and one additional maximum year to determine the predicted take numbers in this rule. Specifically, as in the 2018 HSTT final rule, the Navy proposes to use the maximum annual level to calculate annual takes (which would remain identical to what was determined in the 2018 HSTT final rule), and the sum of all years (four representative and three maximum) to calculate the seven-year totals for this rule.

The existing 2018 HSTT regulations authorize three serious injuries or mortalities from vessel strike in the HSTT Study Area over five years. Based on a revised vessel strike analysis encompassing seven years of activities, the Navy requests no change in the number of requested large whale mortalities due to vessel strike. The large whale stocks that are proposed to be taken by vessel strike are the same as those included in the 2018 HSTT final rule.

As noted above, the proposed extension of the rule would include mitigation, monitoring, and reporting measures that are identical to those included in the 2018 HSTT final rule. Mitigation would include procedural mitigation measures and mitigation areas. Procedural mitigation includes, but is not limited to, the use of trained Lookouts (protected species observers) to monitor for marine mammals in mitigation zones, requirements for Lookouts to immediately provide notification of sightings to the appropriate watch station, requirements for implementation of powerdown and shutdown mitigation measures (based on activity defined zones), pre- and post-monitoring requirements for explosive events, and measures to reduce the likelihood of ship strikes. Chapter 5 of the 2018 HSTT FEIS/OEIS and the *Mitigation Measures* section of

the 2018 HSTT final rule include detailed descriptions of mitigation measures for each specified activity in the HSTT Study Area. The Navy will also implement mitigation measures within certain areas (Mitigation Areas) and/or at times to avoid or minimize potential impacts on marine mammals in areas and/or times where they are known to engage in biologically important behaviors (*i.e.*, for foraging, migration, reproduction), where the disruption of those behaviors would be more likely to result in population-level impact. The *Mitigation Measures* section in the 2018 HSTT final rule includes detailed descriptions of geographic mitigation measures in the HSTT Study Area. Maps and tables of the mitigation areas can be found in Chapter 5 of the 2018 HSTT FEIS/OEIS.

The Navy proposes to continue forward the implementation of the robust Integrated Comprehensive Monitoring Program and Strategic Planning Process outlined in the current regulations. The Navy's monitoring strategy, currently required by the 2018 HSTT regulations, is well-designed to work across Navy ranges to help better understand the impacts of the Navy's activities on marine mammals and their habitat by focusing on learning more about marine mammal occurrence in different areas and exposure to Navy stressors, marine mammal responses to different sound sources, and the consequences of those exposures and responses on marine mammal populations. Similarly, the proposed extension of regulations would include identical adaptive management provisions and reporting requirements as the existing regulations. Please refer to Chapter 13 of the Navy's application for full details on the monitoring and reporting proposed by the Navy.

#### Information Sought

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the Navy, if appropriate.

Dated: April 30, 2019.

#### Donna S. Wieting,

Director, Office of Protected Resources,  
National Marine Fisheries Service.

[FR Doc. 2019-09376 Filed 5-7-19; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Evaluation of State Coastal Management Programs

**AGENCY:** Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management will hold a public meeting to solicit comments on the performance evaluation of the Rhode Island Coastal Management Program.

**DATES:** *Rhode Island Coastal Management Program Evaluation:* The public meeting will be held on June 18, 2019, and written comments must be received on or before June 28, 2019.

For specific dates, times, and locations of the public meetings, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** You may submit comments on the coastal program NOAA intends to evaluate by any of the following methods:

*Public Meeting and Oral Comments:* A public meeting will be held in Wakefield, Rhode Island. For the specific location, see **SUPPLEMENTARY INFORMATION**.

*Written Comments:* Please direct written comments to Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, or email comments [Carrie.Hall@noaa.gov](mailto:Carrie.Hall@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Carrie Hall, Evaluator, Planning and Performance Measurement Program, Office for Coastal Management, NOS/NOAA, 1305 East-West Highway, 11th Floor, N/OCM1, Silver Spring, Maryland 20910, by phone at (240) 533-0730 or email comments [Carrie.Hall@noaa.gov](mailto:Carrie.Hall@noaa.gov). Copies of the previous evaluation findings and 2016-2020 Assessment and Strategy may be viewed and downloaded on the internet at <http://coast.noaa.gov/czm/evaluations>. A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**. **SUPPLEMENTARY INFORMATION:** Section 312 of the Coastal Zone Management

Act (CZMA) requires NOAA to conduct periodic evaluations of federally approved state and territorial coastal programs. The process includes one or more public meetings, consideration of written public comments, and consultations with interested Federal, state, and local agencies and members of the public. During the evaluation, NOAA will consider the extent to which the state has met the national objectives, adhered to the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is completed, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

You may participate or submit oral comments at the public meeting scheduled as follows:

*Date:* June 18, 2019

*Time:* 6:00 p.m., local time

*Location:* Department of Administration, Conference Room A, One Capitol Hill, Providence, Rhode Island 02908

Written public comments must be received on or before June 28, 2019.

Federal Domestic Assistance Catalog 11.419.

Coastal Zone Management Program Administration

Dated: April 30, 2019.

**Keelin Kuipers,**

*Acting Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2019-09390 Filed 5-7-19; 8:45 am]

**BILLING CODE 3510-08-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XH020

#### Magnuson-Stevens Fishery Conservation and Management Act; General Provisions for Domestic Fisheries; Issuance of Exempted Fishing Permits

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** NMFS West Coast Region is announcing exempted fishing permits (EFP) issued to target highly migratory

species (HMS) in Federal waters off the U.S. West Coast for 2019. NMFS renewed 21 standard deep-set buoy gear (standard DSBG) EFPs for 2019 and issued a new pelagic longline EFP valid for 24 months from the effective date. Ten linked deep-set buoy gear (linked DSBG) EFPs issued in 2018 remain valid for the 2019 calendar year. The permits are issued as exemptions from specific prohibitions under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). The general purpose of the EFPs is to allow novel fishing practices and gear types that are not otherwise authorized under a fishery management plan. Specifically, NMFS will collect data on the effects and efficacy of using these gears to fish for swordfish and other HMS off the West Coast.

**DATES:** See the **SUPPLEMENTARY INFORMATION** section for details on the dates that permits were issued and will expire.

**ADDRESSES:** Copies of supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2019-0048, or by contacting the Highly Migratory Species Branch of NMFS West Coast Region at [WCR.HMS@noaa.gov](mailto:WCR.HMS@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Chris Fanning, NMFS West Coast Region, 562-980-4198, or [Chris.Fanning@noaa.gov](mailto:Chris.Fanning@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 2, 2014, the Pacific Fishery Management Council (Council) solicited EFP proposals to test alternative fishing gear as a substitute in the large mesh drift net (DGN) fishery, or test new approaches or methods of fishing DGN gear ([http://www.pccouncil.org/wp-content/uploads/G3a\\_Att1\\_HMS\\_EFP\\_Notice\\_Ltr\\_July2014\\_SEPT2014BB.pdf](http://www.pccouncil.org/wp-content/uploads/G3a_Att1_HMS_EFP_Notice_Ltr_July2014_SEPT2014BB.pdf)). Applications for EFPs were submitted on February 9, 2015, for the Council's consideration during the March 2015 Council meeting. The Council recommended that NMFS approve EFP applications to use standard and linked DSBG and an application to use deep-set and shallow-set longline gear in the exclusive economic zone (EEZ) off the West Coast of the United States. NMFS published notice of receipt of these applications, as well as the Council's recommendations, in the **Federal Register** on the respective dates: May 22, 2015 (80 FR 29662), October 17, 2016 (81 FR 71845), August 28, 2017 (81

FR 40751), November 16, 2017 (82 FR 53480), and June 6, 2018 (82 FR 53481).

Standard and linked DSBG are not currently authorized gear types under the HMS FMP. Standard DSBG fishing trials occurred for the past eight years under research activity (2011 to 2015) and EFPs (2015 to 2018) in the U.S. West Coast EEZ off California. Linked DSBG research fishing trials included a total of 40 fishing days from 2015 through 2017. Data collected from these fishing activities have demonstrated that about 95 percent of fish species caught with standard DSBG and 90 percent of those caught with linked DSBG are marketable.

Longline fishing is currently prohibited within the U.S. West Coast EEZ; therefore, an EFP was needed to authorize the activity to take place in Federal waters. The longline EFP will provide data for fishery managers about the performance of the gear and the mitigation measures intended to minimize adverse environmental impacts in these waters.

#### Standard and Linked DSBG EFPs

NMFS considered all applicable Federal laws when issuing the standard and linked DSBG EFPs, including section 7(a)(2) of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), and determined that the proposed action is not likely to adversely affect any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Additionally, NMFS completed the appropriate analyses under the National Environmental Policy Act, in accordance with NOAA Administrative Order 216-6, prior to issuing the standard and linked DSBG EFPs. In 2018, NMFS issued 27 standard DSBG EFPs valid through December 31, 2018, and ten linked DSBG EFPs valid through December 31, 2019 (Table 1). Based on standard DSBG fishing activity in 2018 and other factors (*e.g.*, gear purchase, participation in other unrelated fisheries that precluded fishing DSBG, appeal for renewal, etc.), NMFS renewed 21 standard DSBG EFPs through 2019 (Table 2). As a result of Federal review and a growing understanding of risks with the gear, NMFS issued terms and conditions for the EFPs that include more mitigation measures than those proposed in the original applications. See the **ADDRESSES** section for more information on these supporting documents.

TABLE 1—LINKED DSBG<sup>1</sup> EFPs ISSUED IN 2018 AND EXPIRING ON DECEMBER 31, 2019

Applicant/vessel captain	Vessel name	Vessel ID No.
Nathan Perez .....	Bear Flag 2 .....	558683
John Foster .....	Chula .....	1217070
Steve Mintz .....	D J .....	550062
David Haworth .....	Elizabeth H .....	644228
Donald Krebs .....	Gold Coast .....	622026
John Hall .....	Kaylee H .....	536620
Tim Athens .....	Outer Banks .....	969797
David Haworth .....	Pacific Horizon .....	627203
Arthur Lorton .....	Sea Haven .....	635102
Kelly Fukushima .....	Three Boys .....	CF2036TJ

<sup>1</sup> Linked DSBG EFPs may fish a combination of linked and standard DSBG.

TABLE 2—STANDARD DSBG EFPs ISSUED IN 2018 AND RENEWED FOR 2019 AND EXPIRING ON DECEMBER 31, 2019

Applicant/vessel captain	Vessel name	Vessel ID No.
Dan Fuller .....	Audax .....	CF8370FH
William Sutton .....	Aurelia .....	597524
Scott Brenneman .....	Circle Hook .....	1286891
Jack Stephens .....	DEA .....	CF0012HY
Ron Ellis .....	Defiance .....	40335
Stephen Greyshock .....	Emma Ray .....	CF1878ZM
Tim Ferguson .....	Espada .....	624462
Michael Graves .....	Fishtail .....	1030136
Andrii Sidielnikov .....	Irbis .....	CF6266KM
John Ford .....	JB .....	550580
Lance Rienhart .....	Leah Gail .....	944172
Matt White .....	Lil Jack .....	595177
Bob Ball .....	Pacific Sword .....	CF4430GJ
Kent Jacobs .....	Patricia J .....	585405
Fred Hepp .....	Plumeria .....	599359
Raymond Kennedy .....	Rainman .....	1272816
Dustin Selck .....	Scorpio .....	918500
Anthony Makul .....	Spirit .....	611940
Andrew Rasmussen .....	Sundowner .....	628101
David Hutto .....	Terlingin .....	1223771
Ben Stephens .....	Tres Mujeres .....	1066033

### Longline EFP

NMFS considered all applicable Federal laws prior to issuing the longline EFP on April 29, 2019, including completing a consultation under section 7(a)(2) of the ESA. This resulted in a biological opinion that concluded the impacts of the EFP are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (PCTS, WCR–2018–9553). NMFS also determined that the longline EFP is not likely to adversely affect short-tailed albatross, and the U.S. Fish and Wildlife Service concurred with this determination on February 3, 2017.

Additionally, NMFS completed the appropriate analyses under the National Environmental Policy Act, in accordance with NOAA Administrative Order 216–6, prior to issuing the longline EFP described in Table 3.

As a result of Federal review, NMFS issued terms and conditions for this EFP that include more mitigation measures than those proposed in the original application. For example, to monitor and lower the risk of interactions with protected species, the terms and conditions require 100 percent observer coverage of the activities, night setting of shallow-set longlines, and specify no-fishing areas (*e.g.*, the Southern California Bight and within leatherback critical habitat or 50 nautical miles from

the coast, whichever is greater). The terms and conditions also mandate gear, bait and operational techniques, such as the use of a streamer line, and limits on incidents of hooking or entanglement of loggerhead and leatherback sea turtles. If two interactions with loggerhead sea turtles or three interactions with leatherback sea turtles are observed during the EFP activities, NMFS will require longline activities under the EFP to cease after any remaining gear in the water is retrieved. NMFS will also require the EFP operations to cease if one mortality of a leatherback sea turtle is observed.

See the **ADDRESSES** section for more information on these supporting documents.

TABLE 3—LONGLINE EFP ISSUED ON APRIL 29, 2019, AND VALID FOR 24 MONTHS FROM THE EFFECTIVE DATE

Applicant/vessel captain	Vessel name	Vessel ID No.
David Haworth .....	Pacific Horizon .....	627203

TABLE 3—LONGLINE EFP ISSUED ON APRIL 29, 2019, AND VALID FOR 24 MONTHS FROM THE EFFECTIVE DATE—  
Continued

Applicant/vessel captain	Vessel name	Vessel ID No.
John Gibbs .....	Southern Horizon .....	1052597

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

Dated: May 2, 2019.

**Jennifer M. Wallace,**

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

[FR Doc. 2019-09422 Filed 5-7-19; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2019-ICCD-0060]

### Agency Information Collection Activities; Comment Request; Impact Aid Program—Application for Section 7002 Assistance

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before July 8, 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-2019-ICCD-0060. 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](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto: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 Amanda Ognibene, 202-453-6637.

**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:* Impact Aid Program—Application for Section 7002 Assistance.

*OMB Control Number:* 1810-0036.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 215.

*Total Estimated Number of Annual Burden Hours:* 323.

*Abstract:* The U.S. Department of Education is requesting approval for the Application for Assistance under Section 7002 of Title VII of the Elementary and Secondary Education Act (ESEA). This application is for a grant program otherwise known as Impact Aid Payments for Federal

Property. Local Educational Agencies (LEAs) that have lost taxable property due to Federal activities request financial assistance by completing an annual application. Regulations for Section 7002 of the Impact Aid Program are found at 34 CFR 222, subpart B.

Applicants prepare and submit these applications through an e-application on ED's Impact Aid Grant System website. The e-application offers recurring LEA applicants significant advantages in preparing the application because it pre-populates much of the LEA's identifying information and Federal property data. The e-application automatically checks for completion of all necessary items and includes arithmetic checks for table subtotals and the application total. This software reduces the number of errors in applications submitted to ED.

Dated: May 3, 2019.

**Kate Mullan,**

*PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019-09457 Filed 5-7-19; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[Docket No. ED-2019-ICCD-0059]

### Agency Information Collection Activities; Comment Request; Impact Aid Program—Application for Section 7003 Assistance

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before July 8, 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-2019-ICCD-0059. 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 [www.regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto: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 Amanda Ognibene, 202-453-6637.

**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:* Impact Aid Program—Application for Section 7003 Assistance.

*OMB Control Number:* 1810-0687.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 301,079.

*Total Estimated Number of Annual Burden Hours:* 87,656.

*Abstract:* The U.S. Department of Education is requesting approval for the Application for Assistance under Section 7003 of Title VIII of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). This application is for a grant program otherwise known as Impact Aid Basic Support Payments. Local Educational Agencies (LEAs) whose enrollments and revenues are adversely impacted by Federal activities use this form to request financial assistance. Regulations for the Impact Aid Program are found at 34 CFR 222.

The statute and regulations for this program require a variety of data from applicants annually to determine eligibility for the grants and the amount of grant payment under the statutory formula. The least burdensome method of collecting this required information is for each applicant to submit these data through a web-based electronic application hosted on the Impact Aid Grant System (IAGS) website.

The Impact Aid Program, authorized by Title VII of the Elementary and Secondary Education Act (ESEA), provides financial assistance to local educational agencies (LEAs) whose enrollment or revenues are adversely affected by Federal activities.

The statute and implementing regulations (34 CFR part 222) require information from applicants annually to determine eligibility for and the amount of payments. The least burdensome method of collecting this required information is for each applicant to submit it as part of its annual Impact Aid application, previously approved under OMB 1810-0687.

ED is now requesting to revise this collection. Previously, applicants submitted applications through ED's G5 website. Now, the Impact Aid Program is developing its own online grants management system to better serve the local educational agencies who receive Impact Aid funds. Grantees will now be able to submit the annual application through the Impact Aid Grant System. The program has revised the application to be more user-friendly and reduce burden. The data collected on the application is largely the same. All changes are summarized below.

- The program regulations at 34 CFR 222.33 require that LEAs survey their

Federally connected children “no earlier than the fourth day of the regular school year.” In order to monitor this, we will have each applicant enter the first day of school for students.

- We now require first-time Charter School LEA applicants to submit their charter and their annual financial report at the time of application. The program has always required new charter school applicants to submit this information in order to verify that the school is financially independent and able to apply on its own behalf as an LEA, per the statutory definition in 20 U.S.C. 7713; however, they were requested after the charter school submitted the application. We are now asking for these documents with the application to speed the review process.

- Another change requires applicants to affirm they have enough children to qualify for categories F and G before being allowed to enter child counts in those categories. This is intended to save them effort in data entry. This does not require any additional submissions with the data collection.

- We no longer require the Housing Official Certification form. We ask only for the Housing Official's contact information so that we may obtain data required to calculate housing renovation claims directly from the official.

- We have eliminated the requirement to upload a signed cover page and assurances page, and will permit applicants to sign the required attestations and certifications electronically.

Dated: May 3, 2019.

**Kate Mullan,**

*PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.*

[FR Doc. 2019-09456 Filed 5-7-19; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

[Case Number 2018-003; EERE-2018-BT-WAV-0006]

### Energy Conservation Program: Decision and Order Granting a Waiver to LG Electronics USA, Inc. From the Department of Energy Room Air Conditioner Test Procedure

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of decision and order.

**SUMMARY:** The U.S. Department of Energy (“DOE”) gives notice of a Decision and Order (Case Number

2018–003) that grants LG Electronics USA, Inc. (“LG”) a waiver from specified portions of the DOE test procedure for determining the energy efficiency of specified room air conditioners. Under the Decision and Order, LG is required to test and rate the specified basic models of its room air conditioners in accordance with the alternate test procedure specified in the Decision and Order.

**DATES:** The Decision and Order is effective on May 8, 2019. The Decision and Order will terminate upon the compliance date of any future amendment to the test procedure for room air conditioners located in 10 CFR part 430, subpart B, appendix F that addresses the issues presented in this waiver. At such time, LG must use the relevant test procedure for this product for any testing to demonstrate compliance with standards, and any other representations of energy use.

**FOR FURTHER INFORMATION CONTACT:**

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Email: [AS\\_Waiver\\_Requests@ee.doe.gov](mailto:AS_Waiver_Requests@ee.doe.gov).

Ms. Sarah Butler, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–33, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585–0103. Telephone: (202) 586–1777. Email: [Sarah.Butler@hq.doe.gov](mailto:Sarah.Butler@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with Title 10 of the Code of Federal Regulations (10 CFR 430.27(f)(2)), DOE gives notice of the issuance of its Decision and Order as set forth below. The Decision and Order grants LG a waiver from the applicable test procedure in 10 CFR part 430, subpart B, appendix F (“Appendix F”) for specified basic models of room air conditioners, if LG tests and rates such products using the alternate test procedure specified in the Decision and Order. LG’s representations concerning the energy efficiency of the specified basic models must be based on testing according to the provisions and restrictions in the alternate test procedure set forth in the Decision and Order, and the representations must fairly disclose the test results. Distributors, retailers, and private labelers are held to the same requirements when making representations regarding the energy efficiency of these products. (42 U.S.C. 6293(c))

Consistent with 10 CFR 430.27(j), not later than July 8, 2019, any

manufacturer currently distributing in commerce in the United States a product employing a technology or characteristic that results in the same need for a waiver from the applicable test procedure must submit a petition for waiver. Manufacturers not currently distributing such products in commerce in the United States must petition for and be granted a waiver prior to the distribution in commerce of those products in the United States. Manufacturers may also submit a request for interim waiver pursuant to the requirements of 10 CFR 430.27.

Signed in Washington, DC, on May 1, 2019.

**Steven Chalk,**

*Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

**Case # 2018–003**

**Decision and Order**

**I. Background and Authority**

The Energy Policy and Conservation Act of 1975 (“EPCA”),<sup>1</sup> among other things, authorizes the U.S. Department of Energy (“DOE”) to regulate the energy efficiency of a number of consumer products and industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B<sup>2</sup> of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency for certain types of consumer products. These products include room air conditioners, the focus of this document. (42 U.S.C. 6292(a)(2))

Under EPCA, DOE’s energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6291), energy conservation standards (42 U.S.C. 6295), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other

representations about the efficiency of that product (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the product complies with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE is required to follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for room air conditioners is contained in the Code of Federal Regulations (“CFR”) at 10 CFR part 430, subpart B, appendix F, *Uniform Test Method for Measuring the Energy Consumption of Room Air Conditioners* (“Appendix F”).

Under 10 CFR 430.27, any interested person may submit a petition for waiver from DOE’s test procedure requirements. DOE will grant a waiver from the test procedure requirements if DOE determines either that the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(f)(2). DOE may grant the waiver subject to conditions, including adherence to alternate test procedures. *Id.*

**II. LG’s Petition for Waiver: Assertions and Determinations**

By letter dated April 6, 2018, LG submitted a petition for waiver and application for an interim waiver from the applicable room air conditioner test procedure set forth in Appendix F. LG requested relief for the following room air conditioner basic models: LW2217IVSM, LW1817IVSM, and LW1517IVSM.<sup>3</sup> According to LG, Appendix F, which provides for testing at full-load performance only (*i.e.*, at a single indoor and high-temperature outdoor operating condition), does not take into account the benefits of variable-speed room air conditioners, with their part-load performance

<sup>1</sup> All references to EPCA in this document refer to the statute as amended through the America’s Water Infrastructure Act of 2018, Public Law 115–270 (October 23, 2018).

<sup>2</sup> For editorial reasons, upon codification in the U.S. Code, Part B was redesignated as Part A.

<sup>3</sup> LG provided these basic model numbers in its April 6, 2018 petition.

characteristics, and misrepresents their actual energy consumption. Appendix F requires room air conditioners be tested only with full-load performance as a result of DOE's having previously concluded that widespread use of part-load technology in room air conditioners was not likely to be stimulated by the development of a part-load metric, and insufficient information available at that time regarding the cost effectiveness of part-load technologies as compared to currently [at the time] available technologies. 76 FR 972, 1016 (January 6, 2011).

LG stated that variable-speed room air conditioners use frequency controls to constantly adjust the compressor rotation speed to maintain the desired temperature in the home without turning the motor on and off; that the compressor responds automatically to surrounding conditions to operate in the most efficient possible manner; and that this results in both significant energy savings and faster cooling compared to a typical room air conditioner, which does not have a variable-speed compressor. LG further stated that variable-speed room air conditioners also have a higher/lower operating range (10 Hz to 120 Hz) than room air conditioners without variable-speed compressors. LG asserted that because the DOE test procedure does not account for part-load performance, the results of the test procedure are not representative of the actual energy consumption of variable-speed room air conditioners. DOE agrees that the current test procedure produces test results that are unrepresentative of actual energy use, and accordingly energy efficiency, for variable-speed room air conditioners. The current test procedure's single full-load test condition does not account for such products automatically adjusting compressor or fan speed during performance under part-load conditions. As a result, the current test procedure does not capture the relative efficiency gains of variable-speed technology under part-load conditions, as would be experienced during a representative average use cycle or period of use. Also, an alternate test procedure, similar to LG's requested approach but with modifications, will appropriately reflect operation under part-load conditions and provide results that are representative of actual energy efficiency for variable-speed room air conditioners during a representative average use cycle or period of use, as discussed further below.

In its petition, LG requested an alternate test procedure, which would

provide for testing the specified basic models according to Appendix F, except that the variable-speed room air conditioners would be tested at four different outdoor temperature rating conditions<sup>4</sup> (95 degrees Fahrenheit ("°F") and 92 °F with maximum compressor speed, 87 °F with intermediate compressor speed, and 82 °F with minimum compressor speed) instead of the single outdoor temperature rating condition (95 °F) required by Appendix F. Under the suggested alternate test procedure, the variable-speed room air conditioner combined energy efficiency ratio ("CEER") would be calculated by multiplying the unit's measured CEER value at the 95 °F rating condition by a "performance adjustment factor." The performance adjustment factor would reflect the average performance improvement relative to a comparable single-speed unit resulting from the implementation of a variable-speed compressor across previously described multiple rating conditions. To determine the performance adjustment factor, individual CEER values would be measured at each of the four rating conditions, and the four CEER values would be averaged using weighting factors based on fractional temperature bin hours for each rating temperature.<sup>5</sup> This weighted-average value would be adjusted to normalize it against the expected weighted-average CEER under the same four rating conditions of a comparable single-speed room air conditioner that has the same performance as the variable-speed test unit at the 95 °F test condition. The performance adjustment factor would be calculated as the percent improvement of the weighted CEER value of the variable speed room air conditioner compared to the weighted CEER value of the comparable single-speed room air conditioner.

As discussed, the current test procedure relies on a single operating condition, defined by the dry-bulb and wet-bulb temperatures in the indoor and outdoor side test chambers. The suggested alternate approach for variable-speed room air conditioners involves measuring performance over a range of four operating conditions,

<sup>4</sup> Each rating condition is expressed as a set of indoor and outdoor dry-bulb temperatures, with corresponding wet-bulb temperatures to specify the sensible and latent heat conditions in both sides of the test chamber, as shown in Table 1 of the alternate test procedure in the Order. As a condensed notation when discussing the rating conditions in this Order, only the outdoor dry-bulb temperature is stated.

<sup>5</sup> The fractional temperature bin hours for each rating temperature are derived from those provided in Table 16 of AHRI 210/240–2017.

including reduced outdoor temperature conditions at which variable-speed room air conditioners would perform more efficiently than single-speed room air conditioners, and that better reflect representative use. Although a single-speed air conditioner also would operate more efficiently at reduced outdoor temperatures, the marginal improvement of a variable-speed room air conditioner exceeds that of a single-speed room air conditioner. There are several reasons for this: Unlike single-speed room air conditioners, variable-speed units match the load, avoid cycling losses, and use condition-specific control strategies. Because the current test procedure tests only under a single operating condition, comparing variable-speed room air conditioner performance based on testing at four operating conditions against a single-speed room air conditioner tested at the highest-temperature operating condition would not provide an appropriate comparison.

A performance adjustment factor allows a more appropriate comparison between a variable-speed room air conditioner tested according to the alternate test procedure and a single-speed room air conditioner tested according to the current test procedure. The performance adjustment factor represents the average relative benefit of variable-speed units over single-speed units across the range of operating conditions. It represents the benefit compared to a theoretical comparable single-speed room air conditioner. It is applied to the measured variable-speed room air conditioner performance only at the high-temperature operating condition (the same operating condition under which single-speed room air conditioners are tested) to provide a more appropriate comparison to the existing CEER metric for single-speed room air conditioners.

On June 29, 2018, DOE published a notice that announced its receipt of the petition for waiver and granted LG an interim waiver. 83 FR 30717 ("June 2018 notice"). In the June 2018 notice, DOE presented LG's claim that the results of the test procedure in Appendix F are not representative of the actual energy consumption of the variable-speed room air conditioners specified in LG's petition for waiver and the requested alternate test procedure described above.

In the June 2018 notice, DOE specified an alternate test procedure as suggested by LG that must be followed for testing and certifying the specific basic models for which LG requested a waiver. For the reasons explained here and in the Notice of Petition for Waiver,

without a waiver, the three room air conditioner basic models identified in the interim waiver, and included in this Order, contain a design characteristic, variable-speed compressors, that yields test results unrepresentative of their true energy efficiency.

By letter dated March 11, 2019, LG requested DOE extend the scope of the interim waiver to include an additional basic model, LW1019IVSM. LG stated that basic model LW1019IVSM employs the same technology as the basic models addressed by the interim waiver.

DOE has reviewed LG's waiver extension request and based on that review, determined that the room air conditioner basic model identified in LG's request incorporates the same design characteristics as those basic models covered under the interim waiver in Case Number 2018–003 such that the test procedure evaluates that basic model in a manner that is unrepresentative of its actual energy use. DOE has also determined that the alternate test procedure will evaluate the additional basic model, LW1019IVSM, in a manner that is representative of its actual energy use. As such, DOE is including LG's basic model LW1019IVSM in this Decision and Order along with the three basic models that were listed in the interim waiver.

Thus, DOE is requiring LG to test and rate the four room air conditioner basic models identified in today's Order according to the alternate test procedure in today's Order. The alternate test procedure in this Order is a modified version of the procedure in the interim waiver.

In the June 2018 notice, DOE also solicited comments from interested parties on all aspects of the petition. *Id.* DOE received comments from various entities, all opposing LG's petition for various reasons. DOE received comments from the Appliance Standards Awareness Project (“ASAP”), Friedrich Air Conditioning (“Friedrich”), and a jointly submitted comment from Pacific Gas and Electric Company (“PG&E”), San Diego Gas and Electric (“SDG&E”), and Southern California Edison (“SCE”) (hereinafter the “California IOUs”). On August 13, 2018, LG subsequently submitted a rebuttal statement (pursuant to 10 CFR 430.27(d)(3)) in response to these comments.<sup>6</sup>

Although ASAP agreed with LG's assertion that the current test procedure

for room air conditioners does not capture part-load performance and the potential benefits of variable-speed technology, they believe that a test procedure waiver is not the appropriate approach to address the concern. They stated that, instead of granting a waiver for an alternate test with fixed temperature, humidity, and compressor speeds, DOE should amend the current test procedure to use a load-based testing approach. ASAP contended that room air conditioners likely spend a significant amount of time during the cooling season operating under part-load conditions, which require less cooling. ASAP stated that the existing full-load test at an external temperature of 95 °F both does not reflect these actual operating conditions and does not capture inefficiencies and performance degradation due to a single-speed unit's cycling on and off under part-load operating conditions. ASAP suggested that a load-based test would better reflect how both single-speed and variable-speed room air conditioners perform in the field and would capture not only the benefits of variable-speed compressors, in that they are able to provide cooling that matches the load, but also other important factors that affect efficiency, including the avoidance of cycling losses and condition-specific control strategies. ASAP referenced recent work by the CSA Group in developing a load-based test for residential central air conditioners and heat pumps that it suggested could serve as a model for a load-based test for room air conditioners. ASAP further believes that a load-based approach would provide better information to consumers, encourage the adoption of new technologies that may improve efficiency, and, while also providing additional benefits to consumers and the electric grid (e.g., quieter operation and the ability to reduce power consumption during periods of peak demand). (ASAP, No. 5 at pp. 1–2)<sup>7</sup>

In response to ASAP's comments, LG noted that DOE's regulations specify that a granted waiver must be followed, as soon as practicable, by a test procedure rulemaking to amend DOE's regulations and eliminate any need for continuation of the waiver. LG asserted that a waiver is appropriate to address any misrepresentation of energy

consumption immediately and expressed support for a subsequent rulemaking to establish such an approach in the DOE room air conditioner test procedure. LG also asserted that ASAP's preference for a dynamic load-based test would not be appropriate grounds for denying LG's petition for waiver, which it claimed has met all waiver criteria and is thereby warranted. (LG, No. 7 at pp. 2–3)

DOE agrees with the concept that a load-based test may be more representative of typical operation, where the conditions within a room vary and the room air conditioner operates based on the set point and monitored conditions. However, there are substantial issues with setting up and maintaining conditions in existing test chambers that are not designed for this type of test. These require significantly more technician involvement and time, thereby greatly increasing the test cost. In addition, because the specific equipment in the calorimeter chamber will affect the variation in chamber temperature as a function of the cooling load, ensuring the reproducibility of the test would substantially increase the test burden in relation to the potential improved representativeness of the test. As a result, DOE has decided not to establish a load-based test. This understanding is based in part on investigative room air conditioner testing that DOE recently conducted.<sup>8</sup> The purposes of the testing were to determine the magnitude of changes to the existing test procedure that would be required under a load-based approach and to identify any issues arising from using calorimeter chambers (which would be necessary under a load-based approach) that were designed for fixed-temperature testing. DOE preliminarily found that calorimeter chambers typically used for room air conditioner testing are not designed to provide a fixed amount of cooling or heating to the chambers, but rather are designed to maintain a fixed temperature and relative humidity while the test unit operates continuously. DOE also is concerned that a load-based test for room air conditioners may not be as repeatable as the existing test procedure because room air conditioner set points and deadband thresholds<sup>9</sup> are typically not

<sup>6</sup> Comments submitted by ASAP, Friedrich, and the Joint Commenters, and the rebuttal statement submitted by LG can be accessed at: <https://www.regulations.gov/docket?D=EERE-2018-BT-WAV-0006>.

<sup>7</sup> A notation in the form “ASAP, No. 5 at pp. 1–2” identifies a written comment: (1) Made by the Appliance Standards Awareness Project; (2) recorded in document number 5 that is filed in the docket of this waiver (Docket No. EERE–2018–BT–WAV–0006) and available for review at <http://www.regulations.gov>; and (3) which appears on pages 1 and 2 of document number 5.

<sup>8</sup> A summary of the results of the investigative room air conditioner testing can be accessed at: <https://www.regulations.gov/document?D=EERE-2018-BT-WAV-0006-0008>.

<sup>9</sup> The term “deadband” refers to the range of ambient air temperatures around the set point for which the compressor remains off, and above which cooling mode is triggered on.

as accurate or precise as typical calorimeter chamber instrumentation, and therefore would also not be reproducible with existing test chambers whose varying designs and reconditioning equipment could result in different chamber sensible and latent heating during testing.

In addition to preferring a load-based test, ASAP expressed concern regarding the fixed compressor speeds in the LG-suggested alternate test procedure, stating that such test conditions do not reflect how variable-speed room air conditioners operate in the field. ASAP asserted that control strategies significantly impact efficiency and performance, and that by fixing the compressor speeds, the alternate test procedure would not capture the impact of a unit's control strategy for adjusting the compressor (and potentially fan) speed(s) in response to varying conditions. (ASAP, No. 5 at p. 2)

DOE agrees that variable-speed room air conditioners in the field are likely to adjust their compressor speed in real-time in response to variations in the cooling load. However, EPCA requires developing a test procedure that is reasonably designed to produce results that measure performance during a representative average use cycle or period of use, without undue burden. Because of the large variation in cooling loads, both for rooms within a house, and among different housing types and geographical areas, identifying a single or multiple representative cooling loads would not be feasible at this time. Furthermore, load-based testing would impose undue cost and burden on manufacturers and test laboratories due to the unique construction and capabilities of existing calorimeter chambers and unit response variability during load-based testing. In contrast, DOE concludes that the approach suggested by LG to measure performance for the full range of variable-speed operation (*i.e.*, from low to full compressor speed under relevant operating conditions) would provide a sufficient performance determination of variable-speed room air conditioners.

Friedrich raised concerns about the suggested alternate test procedure. First, they questioned why the test conditions specified in the interim waiver were those suggested by LG instead of the full set of seasonal energy efficiency ratio ("SEER") test conditions in American National Standards Institute ("ANSI")/Air-Conditioning, Heating, and Refrigeration Institute "AHRI" 2017 Standard 210/240, "Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment" ("AHRI 210/240-2017"). According to

Friedrich, the bin hours and test methodology in AHRI 210/240-2017 have been thoroughly vetted. (Friedrich, No. 4 at p. 1)

In response to Friedrich's comments, LG noted that, where appropriate, the test conditions in the waiver test procedure are based on those in AHRI 210/240-2017 considering that AHRI 210/240-2017 applies to central air conditioners, whereas the petition for waiver is for room air conditioners. LG stated, for example, that the required test conditions in AHRI 210/240-2017 for central air conditioners having variable-speed compressors include a fifth condition, the  $F_1$  test, which is at an outdoor temperature of 67 °F, which LG stated is an unlikely temperature for room air conditioner operation. (LG, No. 7 at pp. 5-6)

DOE reviewed the full set of five required and two optional test conditions in AHRI 210/240-2017 and concludes that those four selected by LG apply to room air conditioners, but the three remaining conditions do not. Specifically, the outdoor test conditions for the required  $F_{Low}$  test<sup>10</sup> (and the optional  $G_{Low}$  and  $L_{Low}$  tests) in Tables 7 and 8 of AHRI 210/240-2017, while applicable to central air conditioners, are not compatible with the room air conditioner test procedure, as the dry-bulb temperature of 67 °F is below the indoor set point of 80 °F prescribed by the test procedure. DOE notes that LG suggested using the remaining required test conditions in Tables 7 and 8 of AHRI 210/240-2017 (*i.e.*, those designated as  $A_{Full}$ ,  $B_{Full}$ ,  $E_{Int}$ , and  $B_{Low}$ ). In addition, DOE notes that the fractional temperature bin hours used in the waiver for each rating condition were derived from the industry-accepted values provided in Table 16 of AHRI 210/240-2017.

Friedrich also questioned whether the capacity and power adjustment factors used to calculate the performance of a comparable single-speed room air conditioner are representative of the range of single-speed room air conditioners on the market. (Friedrich, No. 4 at p. 1) DOE conducted testing and modeling to estimate performance of room air conditioners at varying outdoor ambient conditions. DOE reviewed the capacity and power adjustment factors suggested by LG and notes that they largely align with the data from DOE's testing and modeling. Therefore, DOE is confident that the capacity and power adjustment factor

<sup>10</sup>  $F_{Low}$  is the same test as the  $F_1$  test referred to by LG above, as noted in Table 7 of AHRI 210/240-2017. AHRI 210/240-2017 changed the terminology used to refer to tests from the previous version of the standard.

values suggested by LG to estimate performance of a comparable single-speed room air conditioner at reduced ambient conditions are appropriate and representative of expected performance.

Friedrich also suggested that an alternate test for variable-speed room air conditioners should use a building load and operating hours at specific operating conditions, as is done for the SEER metric in AHRI 210/240-2017. Friedrich disagrees with LG's approach that instead assumes a room air conditioner operates for 750 hours in every condition. (Friedrich, No. 4 at p. 1) In response to Friedrich's comment, LG noted that DOE has previously determined that 750 operating hours is the representative average-use cycle per year for room air conditioners. (LG, No. 7 at pp. 6-7)

DOE reviewed Table 16 in AHRI 210/240-2017 and determined that the full set of conditions are likely not applicable to room air conditioner operation. Table 16 contains data describing the fraction of the cooling season during which the temperature is within each of eight temperature bins, with representative temperatures for each bin ranging from 67 °F to 102 °F in increments of 5 °F. Specifically, DOE agrees that only bins 4 through 7 of Table 16 are appropriate for room air conditioner operation because these are the ranges of temperatures that span the current indoor and outdoor temperature conditions of 80 °F and 95 °F, respectively. DOE notes that normalizing those fractional bin hours results in the weighting factors suggested in LG's petition for waiver, with each weighting factor representing the fraction of 750 hours during the cooling season that would be associated with each outdoor temperature bin. Therefore, DOE concludes that the weighting factors suggested by LG are appropriate for variable-speed room air conditioners.

Friedrich also stated that the alternate test procedure compares the weighted variable-speed CEER to the weighted single-speed CEER, which is higher than the CEER value at which the comparable single-speed unit would currently be rated (*e.g.*, Friedrich commented that a non-weighted CEER of 12, as determined according to Appendix F, would correspond to a weighted CEER of 12.8 when calculated according to the alternate test procedure). Friedrich contends that a different metric should be used to rate variable-speed units, because if CEER is used, a variable-speed unit rated at 14.0 CEER would actually have a performance adjustment factor of 9.3 percent (as compared with the weighted single-speed CEER metric

of 12.8), while the alternate test procedure would indicate that the performance adjustment factor would be 16.5 percent (as compared to a non-weighted 12.0 CEER). (Friedrich, No. 4 at p. 1) LG stated in response to Friedrich's comment that an alternate energy efficiency metric could be addressed by DOE in a subsequent test procedure rulemaking. (LG, No. 7 at p. 7)

DOE notes that only the final CEER metric calculated in section 5.4.9 of the waiver test procedure (*i.e.*, the non-weighted CEER value resulting from testing according to Appendix F, adjusted by the performance adjustment factor determined according to the waiver test procedure) would be used to compare efficiencies among different basic models of room air conditioners. The performance adjustment factor is defined as the percent difference between the weighted single-speed CEER metric adjusted for cycling losses and the weighted variable-speed CEER metric. This represents the relative difference between single-speed and variable-speed room air conditioner performance and efficiency. By comparison, the weighted CEER value is an interim value used to calculate the performance adjustment factor; it is not a reported performance metric. Therefore, it would not be appropriate to compare the variable-speed CEER metric resulting from the alternate test procedure to the interim weighted CEER value, as suggested by Friedrich. DOE concludes that the performance adjustment factor as implemented in this Decision and Order maintains a single metric for all room air conditioners (CEER), while capturing the efficiency improvements associated with variable-speed models.

The California IOUs recommended that DOE deny LG's waiver request and rescind the interim waiver because the CEER weighting scheme in the alternate test procedure represents too significant a change to the CEER performance metric and its calculation methodology. The California IOUs noted that under 10 CFR 430.27, a waiver shall not be granted if it will "change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard." They believe that the alternate testing procedure represents a change in the efficiency metric calculation because it incorporates a weighting approach. Instead of a waiver, the California IOUs suggested that DOE conduct a test procedure rulemaking to allow opportunities for proper consideration, evaluation, and review before a

manufacturer conducts testing and certification using an alternate test procedure. The California IOUs noted that the proposed testing conditions could then be evaluated to determine whether they accurately capture the energy consumption of the listed and comparable models. They asserted that because LG did not submit any data to justify the chosen testing conditions or weighting factors, the validity of these values cannot be verified. The California IOUs further asserted that if the alternate test procedure in this waiver is granted, the CEER metric for the identified LG models would no longer be comparable to those of room air conditioners from other manufacturers, resulting in an unfair marketplace and misleading information for consumers. (California IOUs, No. 6 at pp. 1–2)

In response to the comment from the CA IOUs, LG stated that its suggested alternate test procedure does not change the metric, but rather maintains the CEER metric and would not alter the minimum standard applicable to these products. LG further stated that it is preferable to provide better information to consumers as soon as possible, rather than waiting until a new test procedure rulemaking is completed. (LG, No. 7 at pp. 3–4)

DOE notes that the LG interim waiver approach assesses the performance improvements associated with variable-speed room air conditioners as compared to single-speed room air conditioners, on the basis of adjusted operation at varying, reduced-temperature operating conditions and accounting for savings associated with eliminating cycling losses. DOE recognizes that neither the intermediate individual CEER values nor the weighted CEER value calculated for a variable-speed room air conditioner unit and comparable single-speed room air conditioner at the different operating conditions are comparable to the CEER determined using Appendix F. However, the alternate test procedure does not prescribe either of these values for determining compliance or for comparison with the CEER determined using Appendix F. Under the alternate test procedure, the intermediate CEER values are used to determine a performance adjustment factor that reflects the relative performance improvement associated with variable-speed operation. That performance adjustment factor is then applied to the Appendix F CEER metric. In that way, the efficiency metric for variable-speed room air conditioners remains comparable to the current CEER metric, which would continue to reflect performance of single-speed room air

conditioners. Thus, consumers are informed of the relative efficiency improvements provided by variable-speed room air conditioners. As discussed above, the weighting factors and test conditions suggested by LG are based on the applicable values in Table 16 of AHRI 210/240–2017, which has been verified and validated and is an industry accepted standard.

Additionally, the California IOUs objected to DOE's assertion in the interim waiver that LG would suffer economic hardship and be at a competitive disadvantage if it were required to rate the identified models for which it requested a waiver according to the current room air conditioner test procedure. The California IOUs stated that following a review of product literature, they found that all three LG models listed in the interim waiver (LW2217IVSM, LW1817IVSM, and LW1517IVSM) currently exceed the minimum Federal standards for room air conditioners in their respective product classes, and would therefore not be precluded from entering the market. (California IOUs, No. 6 at p. 2)

LG stated that even though LG's products would not be barred from the market, it would suffer economic hardship and be at a competitive disadvantage without the waiver, because the DOE test procedure does not capture the relative efficiency improvements achieved by variable-speed room air conditioners over a range of operating conditions compared to single-speed room air conditioners. LG asserted that, without an alternate test procedure, the CEER values of variable-speed room air conditioners would be inaccurately low, despite the improved performance under part-load conditions. (LG, No. 7 at pp. 4–5)

For the reasons explained here and in the June 2018 notice, without a waiver, the basic models identified in the Order cannot be tested and rated for energy consumption on a basis representative of their true energy consumption characteristics. DOE has reviewed the recommended procedure suggested by LG and concludes that it will allow for generally accurate measurement of the energy use of the listed models, while alleviating the problems associated with testing these models following DOE's room air conditioner test procedure. LG must test and rate the four listed room air conditioner basic models according to the alternate test procedure specified in the Decision and Order. This alternate test procedure is substantively consistent with the interim waiver's alternate test procedure but makes some modifications.

Based on further review of the alternate test procedure required under the interim waiver order and subsequent investigative testing performed by DOE, the alternate test procedure required under today's Decision and Order: (1) Does not permit use of a psychrometric chamber instead of a calorimeter chamber, (2) provides definitions for each fixed compressor speed, and (3) specifies that compressor speeds will be set in accordance with instructions that LG will provide. DOE has determined that these changes are necessary to ensure better repeatability and reproducibility of the alternate test procedure, as well as representativeness of the results.

DOE is removing the option provided in the interim waiver order to test using the air-enthalpy method, which relies on use of a psychrometric chamber, as opposed to a calorimeter chamber. Use of a psychrometric chamber requires the installation of test ducts on the evaporator and condenser exhausts to measure the air-enthalpy and calculate cooling capacity, which may impact the air flow, particularly on the evaporator side where room air conditioners typically locate the inlet and outlet in close proximity. As such, the results from using a psychrometric chamber may not be representative of typical installations. Further, unlike the calorimeter method, the air-enthalpy method does not address heat loss through the chassis to the room, and may not capture possible heat transfer due to internal air leakage through the chassis between the indoor and outdoor test chambers. DOE's investigative testing of 9 room air conditioners suggested that the air-enthalpy and calorimeter methods are not interchangeable: DOE's results varied up to 11 percent in cooling capacity and efficiency between the two methods.

To capture the efficiency gains associated with variable-speed technology, the alternate test procedure requires testing variable-speed room air conditioners at different fixed compressor speeds under various reduced outdoor operating temperatures. To harmonize the alternate test procedure with industry standards and ensure the compressor speeds are representative of the expected load at each of the outdoor test conditions, DOE is providing definitions for the three compressor speeds outlined in the Interim Waiver Order and revising the nomenclature for these speeds based on AHRI 210/240–2017. To ensure that the low and intermediate compressor speeds result in adequate cooling capacity under reduced loads, the low compressor speed definition

requires that the test unit's measured cooling capacity at the low temperature (82 °F) rating condition must be within 47 percent to 57 percent of the measured cooling capacity when operating with the full compressor speed at the 95 °F rating condition. DOE developed this range based on the building load calculation, equation 11.6, in AHRI 210/240–2017, which relates the building load to the unit full-load cooling capacity and the outdoor temperature. DOE normalized this equation for room ACs so that full load operation occurs at a 95 °F outdoor temperature, rather than 98 °F under the existing equation, and then used the normalized equation to estimate the cooling load as a percentage of the full-load cooling capacity at the 82 °F outdoor temperature rating condition. Based on this analysis, DOE expects that, if a variable-speed room AC's cooling capacity at low compressor speed is higher than 57 percent of the unit's cooling capacity at the 95 °F rating condition, the cooling capacity would exceed the cooling load when the outdoor temperature is 82 °F. Thus, such a unit in the field would cycle the compressor under a cooling load corresponding to the rating condition because more cooling than necessary would be provided to the room, thereby incurring cycling losses and not providing the full performance benefits associated with variable-speed operation. Conversely, if a variable-speed room AC's cooling capacity at the low compressor speed is significantly lower than 57 percent of the unit's cooling capacity at the 95 °F rating condition, the unit would not provide sufficient cooling (based on the expected cooling load at the 82 °F rating condition) and would thereby impact consumer acceptance of the product. For this reason, and because variable-speed room ACs may use compressors that vary speed in discrete steps without the capability to directly operate at a speed that meets the 57 percent requirement precisely, the low speed definition allows for a minimum cooling capacity at the low compressor speed of 47 percent of the cooling capacity at the 95 °F rating condition. This range ensures that the unit's cooling capacity at the representative low cooling load, as determined using the building load calculation in AHRI 210/240–2017, is achieved while maintaining the performance benefits of variable-speed compressors.

Setting and maintaining a specific room air conditioner compressor speed is not typically possible without specific control instructions from the

manufacturer. Because fixed compressor speeds are critical to the repeatability of this alternate test procedure, DOE is requiring that the manufacturer provide DOE all necessary instructions to maintain the compressor speed required for each test condition.<sup>11</sup>

DOE also recognizes that corresponding changes are needed to the calculation that provides the basis of the annual energy consumption and operating cost information presented to consumers on the EnergyGuide Label. These changes will allow for an appropriate comparison of the annual energy consumption and operating costs between single-speed room air conditioners and the four variable-speed room air conditioner basic models listed in today's Order. As such, the alternate test procedure specifies two values of electrical power input. One is used in calculating the average annual energy consumption in 10 CFR 430.23(f)(3), which in turn is used to calculate the combined annual energy consumption and estimated annual operating cost in 10 CFR 430.23(f)(4) and (f)(1), respectively. This value is the weighted average of the input power measured at each of the four test conditions plus the annual energy consumption in inactive mode or off mode. The second value is the value measured at the 95 °F rating condition and reported to DOE through certification reports, as required in 10 CFR 429.15(b)(2), and is used to calculate the unit's measured CEER value in 10 CFR 430.23(f)(5) before applying the performance adjustment factor. DOE concludes that, although a different value of electrical power input is appropriate for calculating the FTC EnergyGuide values, reporting of the electrical power input at the 95 °F rating condition ensures consistency with the cooling capacity measured under the same condition.

DOE further requires in today's Decision and Order testing of the specified basic models in accordance with the instructions submitted by LG on April 2, 2019, regarding the compressor frequencies and control

<sup>11</sup> Pursuant to 10 CFR 1004.11, if the manufacturer submits information that it believes to be confidential and exempt by law from public disclosure, the manufacturer should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked "confidential" including all the information believed to be confidential, and one copy of the document marked "non-confidential" with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

settings used at each test condition for each basic model.<sup>12</sup>

The Decision and Order applies only to the four basic models listed in the Order and does not extend to any other basic models. LG may request that DOE extend the scope of this waiver to include additional basic models that employ the same technology as those listed in the Order. 10 CFR 430.27(g). LG may also submit another petition for waiver from the test procedure for additional basic models that employ a different technology and meet the criteria for test procedure waivers. 10 CFR 430.27(a)(1).

DOE notes that it may rescind or modify the waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, LG may request that DOE rescind or modify the waiver if the company discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

**III. Consultations With Other Agencies**

In accordance with 10 CFR 430.27(f)(2), DOE consulted with the Federal Trade Commission ("FTC") staff concerning the LG petition for waiver. The FTC staff did not have any objections to DOE's granting a waiver to LG for the four specified basic models.

**IV. Order**

After careful consideration of all the material that was submitted by LG and commenters in this matter, public facing materials, and the testing conducted by DOE, it is *ordered* that:

(1) LG must, as of the date of publication of this Order in the **Federal Register**, test the following room air conditioner basic models with the alternate test procedure as set forth in paragraph (2):

Brand	Basic model No.
LG .....	LW2217IVSM
LG .....	LW1817IVSM
LG .....	LW1517IVSM
LG .....	LW1019IVSM

<sup>12</sup>The instructions provided by LG were marked as confidential and, as such, the instructions will be treated as confidential. The document is located in the docket at <https://www.regulations.gov/document?D=EERE-2018-BT-WAV-0006-0010>.

(2) The alternate test procedure for the LG basic models referenced in paragraph (1) of this Order is the test procedure for room air conditioners prescribed by DOE at appendix F to subpart B of 10 CFR part 430 ("Appendix F") and 10 CFR 430.23(f), except: (i) Determine the combined energy efficiency ratio ("CEER") as detailed below, and (ii) calculate the average annual energy consumption referenced in 10 CFR 430.23(f)(3) as detailed below. In addition, for each basic model listed in paragraph (1), maintain compressor speeds at each test condition and set control settings for the variable components, according to the instructions submitted to DOE by LG. All other requirements of Appendix F and DOE's regulations remain applicable.

In 10 CFR 430.23, in paragraph (f) revise paragraph (3)(i) to read as follows: The electrical power input in kilowatts as calculated in section 5.2.1 of appendix F to this subpart, and

In 10 CFR 430.23, in paragraph (f) revise paragraph (5) to read as follows:

(5) Calculate the combined energy efficiency ratio for room air conditioners, expressed in Btu's per watt-hour, as follows:

(i) Calculate the quotient of:  
 (A) The cooling capacity as determined at the 95 °F outdoor test condition, Capacity<sub>95</sub>, in Btus per hour, as determined in accordance with section 5.1 of appendix F to this subpart multiplied by the representative average-use cycle of 750 hours of compressor operation per year, divided by

(B) The combined annual energy consumption, in watt hours, which is the sum of the annual energy consumption for cooling mode, calculated in section 5.4.2 of appendix F to this subpart for test condition 1 in Table 1 of appendix F to this subpart, and the standby mode and off mode energy consumption, as determined in accordance with section 5.3 of appendix F to this subpart. The sum of the annual energy consumption in cooling mode and standby mode and off mode energy consumption is then multiplied by a conversion factor of 1,000 to convert kilowatt-hours to watt-hours.

(ii) Multiply the quotient calculated in paragraph (f)(5)(i) of this section by (1 + Fp), where Fp is the variable-speed room air conditioner performance adjustment factor as determined in section 5.4.8 of appendix F to this subpart.

(iii) Round the resulting value from paragraph (f)(5)(ii) of this section to the nearest 0.1 Btu per watt-hour.

In Appendix F:

Add in Section 1, *Definitions*:

1.8 "Single-speed" means a type of room air conditioner that cannot automatically adjust the compressor speed based on detected conditions.

1.9 "Variable-speed" means a type of room air conditioner that can automatically adjust compressor speed based on detected conditions.

1.10 "Full compressor speed (full)" means the compressor speed specified by the manufacturer at which the unit operates at full load testing conditions.

1.11 "Intermediate compressor speed (intermediate)" means the compressor speed higher than the low compressor speed by one third of the difference between low compressor speed and full compressor speed with a tolerance of plus 5 percent (designs with non-discrete compressor speed stages) or the next highest inverter frequency step (designs with discrete compressor speed steps).

1.12 "Low compressor speed (low)" means the compressor speed specified by the manufacturer at which the unit operates at low load test conditions, such that the measured cooling capacity at Temperature Condition 4 in Table 1 of this appendix, Capacity<sub>4</sub>, is not less than 47 percent and not greater than 57 percent of the measured cooling capacity with the full compressor speed at Temperature Condition 1 in Table 1 of this appendix, Capacity<sub>1</sub>.

Add to the end of Section 2.1 *Cooling*:

For the purposes of this waiver, all units must conduct the cooling mode test a total of four times: One test at each of the test conditions listed in Table 1, consistent with section 3.1 of this appendix.

Revise Section 3.1, *Cooling mode*, to read as follows:

*Cooling mode.* Establish the test conditions described in sections 4 and 5 of ANSI/AHAM RAC-1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3), with the following exceptions: Conduct the set of four cooling mode tests with the test conditions in Table 1. Set the compressor speed required for each test condition in accordance with instructions provided to DOE.

TABLE 1—INDOOR AND OUTDOOR INLET AIR TEST CONDITIONS—VARIABLE-SPEED ROOM AIR CONDITIONERS

Test condition	Evaporator inlet (indoor) air, °F		Condenser inlet (outdoor) air, °F		Compressor speed
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
Test Condition 1 .....	80	67	95	75	Full.
Test Condition 2 .....	80	67	92	72.5	Full.
Test Condition 3 .....	80	67	87	69	Intermediate.
Test Condition 4 .....	80	67	82	65	Low.

Replace Section 5.1 to read as follows:

Calculate the condition-specific cooling capacity (expressed in Btu/hr), Capacity<sub>tc</sub>, for each of the four cooling mode rating test conditions (tc), as required in section 6.1 of ANSI/AHAM RAC-1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3).

Notwithstanding the requirements of 10 CFR 430.23(f), when reporting cooling capacity pursuant to 10 CFR 429.15(b)(2) and calculating energy consumption and costs pursuant to 10 CFR 430.23(f), use the cooling capacity determined for test condition 1 in Table 1 of this appendix.

Replace Section 5.2 to read as follows:

Determine the condition-specific electrical power input (expressed in watts), P<sub>tc</sub>, for each of the four cooling mode rating test conditions, as required by section 6.5 of ANSI/AHAM RAC-1 (incorporated by reference; see 10 CFR 430.3) and in accordance with ANSI/ASHRAE 16 (incorporated by reference; see 10 CFR 430.3). Notwithstanding the requirements of 10 CFR 430.23(f), when reporting electrical power input pursuant to 10 CFR 429.15(b)(2) and calculating energy consumption and costs pursuant to 10 CFR 430.23(f)(5), use the electrical power input value measured for test condition 1 in Table 1 of this appendix. Notwithstanding the requirements of 10 CFR 430.23(f), when calculating energy consumption and costs pursuant to 10 CFR 430.23(f)(3), use the weighted electrical power input, P<sub>wt</sub>, calculated in section 5.2.1 of this appendix, as the electrical power input.

Insert a new Section 5.2.1:

5.2.1 *Weighted electrical power input.* Calculate the weighted electrical power input in cooling mode, P<sub>wt</sub>, expressed in watts, as follows:

$$P_{wt} = \sum_{tc} P_{tc} \times W_{tc}$$

Where:

P<sub>wt</sub> = weighted electrical power input, in watts, in cooling mode.

P<sub>tc</sub> = electrical power input, in watts, in cooling mode for each test condition in Table 1.

W<sub>tc</sub> = weighting factors for each cooling mode test condition: 0.05 for test condition 1, 0.16 for test condition 2, 0.31 for test condition 3, and 0.48 for test condition 4.

tc represents the cooling mode test condition: “1” for test condition 1 (95 °F condenser inlet dry-bulb temperature), “2” for test condition 2 (92 °F), “3” for test condition 3 (87 °F), and “4” for test condition 4 (82 °F).

Add a new Section 5.4, following Section 5.3, *Standby mode and off mode annual energy consumption:*

5.4 *Variable-speed room air conditioner performance adjustment factor.* Calculate the performance adjustment factor (Fp) as follows:

5.4.1 *Theoretical comparable single-speed room air conditioner.* Calculate the cooling capacity, expressed in British thermal units per hour (Btu/h), and electrical power input, expressed in watts, for a theoretical comparable single-speed room air conditioner at all cooling mode test conditions. A theoretical comparable single-speed room air conditioner has the same cooling capacity and electrical power input, with no cycling losses, as the variable-speed room air conditioner under test at test condition 1 in Table 1.

$$\text{Capacity}_{ss\_tc} = \text{Capacity}_1 \times (1 + (M_c \times (95 - T_{tc})))$$

$$P_{ss\_tc} = P_1 \times (1 - (M_p \times (95 - T_{tc})))$$

Where:

Capacity<sub>ss\_tc</sub> = comparable single-speed room air conditioner cooling capacity, in Btu/h, calculated for each of the cooling mode test conditions in Table 1.

Capacity<sub>1</sub> = variable-speed room air conditioner cooling capacity, in Btu/h, determined in section 5.1 of this appendix for test condition 1 in Table 1.

P<sub>ss\_tc</sub> = comparable single-speed room air conditioner electrical power input, in watts, calculated for each of the cooling mode test conditions in Table 1.

P<sub>1</sub> = variable-speed room air conditioner electrical power input, in watts, determined in section 5.2 of this appendix for test condition 1 in Table 1.

M<sub>c</sub> = adjustment factor to determine the increased capacity at lower outdoor test conditions, 0.0099.

M<sub>p</sub> = adjustment factor to determine the reduced electrical power input at lower outdoor test conditions, 0.0076.

T<sub>tc</sub> = condenser inlet dry-bulb temperature for each of the test conditions in Table 1 (in °F).

95 is the condenser inlet dry-bulb temperature for test condition 1 in Table 1, 95 °F.

tc as defined in section 5.2.1 of this appendix.

5.4.2 *Variable-speed annual energy consumption for cooling mode at each cooling mode test condition.* Calculate the annual energy consumption for cooling mode under each test condition, AEC<sub>tc</sub>, expressed in kilowatt-hours per year (kWh/year), as follows:

$$AEC_{tc} = 0.75 \times P_{tc}$$

Where:

AEC<sub>tc</sub> = variable-speed room air conditioner annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1.

P<sub>tc</sub> and tc are as defined in section 5.2.1 of this appendix.

0.75 is 750 annual operating hours in cooling mode multiplied by a 0.001 kWh/Wh conversion factor from watt-hours to kilowatt-hours

5.4.3 *Theoretical comparable single-speed room air conditioner annual energy consumption for cooling mode at each cooling mode test condition.* Calculate the annual energy consumption for a theoretical comparable single-speed room air conditioner for cooling mode under each test condition, AEC<sub>ss\_tc</sub>, expressed in kWh/year.

AEC<sub>ss\_tc</sub> = 0.75 × P<sub>ss\_tc</sub>

$$AEC_{ss\_tc} = 0.75 \times P_{ss\_tc}$$

Where:

AEC<sub>ss\_tc</sub> = theoretical comparable single-speed room air conditioner annual energy consumption, in kWh/year, in cooling mode for each test condition in Table 1.

P<sub>ss\_tc</sub> = theoretical comparable single-speed room air conditioner electrical power input, in watts, in cooling mode for each test condition in Table 1, determined in section 5.4.1 of this appendix.

tc as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.4 *Variable-speed room air conditioner combined energy efficiency ratio at each cooling mode test condition.* Calculate the variable-speed

room air conditioner combined energy efficiency ratio,  $CEER_{tc}$ , for each test condition, expressed in Btu/Wh.

$$CEER_{tc} = \frac{Capacity_{tc}}{\left(\frac{AEC_{tc} + E_{TSO}}{0.75}\right)}$$

Where:

$CEER_{tc}$  = variable-speed room air conditioner combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1.

$Capacity_{tc}$  = variable-speed room air conditioner cooling capacity, in Btu/h, for each test condition in Table 1, determined in section 5.1 of this appendix.

$AEC_{tc}$  = variable-speed room air conditioner annual energy consumption, in kWh/yr, in cooling mode for each test condition in Table 1, determined in section 5.4.2 of this appendix.

$E_{TSO}$  = standby mode and off mode annual energy consumption for room air conditioners, in kWh/year, determined in section 5.3 of this appendix.

$tc$  as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.5 *Theoretical comparable single-speed room air conditioner combined energy efficiency ratio at each cooling mode test condition.* Calculate the combined energy efficiency ratio for a

theoretical comparable single-speed room air conditioner,  $CEER_{ss_{tc}}$ , for each test condition, expressed in Btu/Wh.

$$CEER_{ss_{tc}} = \frac{Capacity_{ss_{tc}}}{\left(\frac{AEC_{ss_{tc}} + E_{TSO}}{0.75}\right)}$$

Where:

$CEER_{ss_{tc}}$  = theoretical comparable single-speed room air conditioner combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1.

$Capacity_{ss_{tc}}$  = theoretical comparable single-speed room air conditioner cooling capacity, in Btu/h, for each test condition in Table 1, in Btu/h, determined in section 5.4.1 of this appendix.

$AEC_{ss_{tc}}$  = theoretical comparable single-speed room air conditioner annual energy consumption for each test condition in Table 1, in kWh/year, determined in section 5.4.3 of this appendix.

$E_{TSO}$  = standby mode and off mode annual energy consumption for room air conditioners, in kWh/year, determined in section 5.3 of this appendix.

$tc$  as explained in section 5.2.1 of this appendix.

0.75 as defined in section 5.4.2 of this appendix.

5.4.6 *Comparable single-speed room air conditioner adjusted combined*

*energy efficiency ratio for each cooling mode test condition.* Calculate the adjusted combined energy efficiency ratio for a comparable single-speed room air conditioner,  $CEER_{ss_{tc_{adj}}}$ , with cycling losses considered, expressed in Btu/Wh.

$$CEER_{ss_{tc_{adj}}} = CEER_{ss_{tc}} \times CLF_{tc}$$

Where:

$CEER_{ss_{tc_{adj}}}$  = comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1.

$CEER_{ss_{tc}}$  = comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, for each test condition in Table 1, determined in section 5.4.5 of this appendix.

$CLF_{tc}$  = cycling loss factor for each cooling mode test condition: 1 for test condition 1, 0.971 for test condition 2, 0.923 for test condition 3, and 0.875 for test condition 4.

$tc$  as defined in section 5.2.1 of this appendix.

5.4.7 *Weighted combined energy efficiency ratio.* Calculate the weighted combined energy efficiency ratio for the variable-speed room air conditioner,  $CEER_{wt}$ , and comparable single-speed room air conditioner,  $CEER_{ss_{wt}}$ , expressed in Btu/Wh.

$$CEER_{wt} = \sum_{tc} CEER_{tc} \times W_{tc}$$

$$CEER_{ss_{wt}} = \sum_{tc} CEER_{ss_{tc_{adj}}} \times W_{tc}$$

Where:

$CEER_{wt}$  = variable-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{ss_{wt}}$  = comparable single-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh.

$CEER_{tc}$  = variable-speed room air conditioner

combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1, determined in section 5.4.4 of this appendix.

$CEER_{ss_{tc_{adj}}}$  = comparable single-speed room air conditioner adjusted combined energy efficiency ratio, in Btu/Wh, at each test condition in Table 1, determined in section 5.4.6 of this

appendix.

$W_{tc}$  and  $tc$  as explained in section 5.2.1 of this appendix.

5.4.8 *Variable-speed room air conditioner performance adjustment factor.* Calculate the variable-speed room air conditioner performance adjustment factor,  $F_p$ .

$$F_p = \frac{(CEER_{wt} - CEER_{ss_{wt}})}{CEER_{ss_{wt}}}$$

Where:

$F_p$  = variable-speed room air conditioner performance adjustment factor.

$CEER_{wt}$  = variable-speed room air conditioner weighted combined energy efficiency ratio, in Btu/Wh, determined in section 5.4.7 of this appendix.

$CEER_{ss_{wt}}$  = comparable single-speed room

air conditioner weighted combined energy efficiency ratio, in Btu/Wh, determined in section 5.4.7 of this appendix.

(3) *Representations.* LG may not make representations about the efficiency of any basic model in paragraph (1) of this

Order for compliance, marketing, or other purposes unless the basic model has been tested in accordance with the provisions set forth above and such representations fairly disclose the results of such testing in accordance with 10 CFR part 430, subpart B,

appendix F and 10 CFR 429.15, as specified in this Order.

(4) This waiver shall remain in effect according to the provisions of 10 CFR 430.27.

(5) This waiver is issued on the condition that the statements, representations, and documents provided by LG are valid. Any modifications to the controls or configurations of a basic model subject to this waiver will render the waiver invalid with respect to that basic model, and LG will either be required to use the current Federal test procedure or submit a new application for a test procedure waiver. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic model's true energy consumption characteristics. 10 CFR 430.27(k)(1). Likewise, LG may request that DOE rescind or modify the waiver if LG discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. 10 CFR 430.27(k)(2).

(6) LG remains obligated to fulfill the certification requirements set forth at 10 CFR part 429.

Signed in Washington, DC, on May 1, 2019.

**Steven Chalk,**

*Acting Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy*

[FR Doc. 2019-09438 Filed 5-7-19; 8:45 am]

**BILLING CODE 6450-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2019-0192; FRL-9992-45]

### Dinotefuran; Receipt of Application for Emergency Exemptions, Solicitation of Public Comment

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

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Virginia Department of Agriculture and Consumer Services (VDACS) to use the insecticide dinotefuran (CAS No. 165252-70-0) to treat up to 29,000 acres of pome fruits and stone fruits to control the brown marmorated stinkbug. The applicant proposes uses which are supported by the Interregional Research Project Number 4 (IR-4) and have been requested in 5 or more previous years, and petitions for tolerances have not yet

been submitted to the Agency. Therefore, EPA is soliciting public comment before making the decision whether to grant the exemptions.

**DATES:** Comments must be received on or before May 23, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2019-0192, by one of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <https://www.epa.gov/dockets/where-send-comments-epa-dockets>.

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

**FOR FURTHER INFORMATION CONTACT:**

Michael L. Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDfRNNotices@epa.gov](mailto:RDfRNNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

##### A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through

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

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

#### II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The VDACS has requested the EPA Administrator to issue specific exemptions for the use of dinotefuran on pome fruits and stone fruits to control the brown marmorated stinkbug. Information in accordance with 40 CFR part 166 was submitted as part of the requests. In addition to VDACS, several other states have previously requested specific exemptions for the same uses and are expected to submit similar requests.

As part of the requests, the applicant asserts that the rapid spread of large outbreaks of the brown marmorated stinkbug (a recent invasive species) resulted in an urgent and non-routine

pest control situation that is expected to cause significant economic losses without the requested uses. The Applicant proposes to make no more than two applications at a rate of 0.203 to 0.304 lb. (maximum total of 0.608 lb.) of dinotefuran per acre, on up to 29,000 acres of pome fruits and stone fruit grown in Virginia from May 1 to October 15, 2019. A total of 17,632 lbs. of dinotefuran could be used (maximum acreage at highest rate).

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 at 40 CFR 166.24(a)(7), require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the Interregional Research Project Number 4 (IR-4) and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the VDACS.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: May 1, 2019.

**Michael Goodis,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2019-09379 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2019-0075; FRL-9991-68]

### Certain New Chemicals; Receipt and Status Information for February 2019

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

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or

concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 02/01/2019 to 02/28/2019.

**DATES:** Comments identified by the specific case number provided in this document must be received on or before June 7, 2019.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2019-0075, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001.

- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.html>.

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

#### FOR FURTHER INFORMATION CONTACT:

*For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-8593; email address: [rahai.jim@epa.gov](mailto:rahai.jim@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](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### *What action is the Agency taking?*

This document provides the receipt and status reports for the period from 02/01/2019 to 02/28/2019. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including

amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This information is updated on a weekly basis.

###### *B. What is the Agency's authority for taking this action?*

Under the TSCA, 15 U.S.C. 2601 *et seq.*, a chemical substance may be either an "existing" chemical substance or a "new" chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a "new chemical substance," while a chemical substance that is listed on the TSCA Inventory is classified as an "existing chemical substance." (See TSCA section 3(11).) For more information about the TSCA Inventory go to: <https://www.epa.gov/tsca-inventory>.

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for "test marketing" purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing

exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/oppt/newchemicals>.

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

*C. Does this action apply to me?*

This action provides information that is directed to the public in general.

*D. Does this action have any incremental economic impacts or paperwork burdens?*

No.

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

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through [regulations.gov](http://regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI

must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

**II. Status Reports**

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL-4942-7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices>. This

information is updated on a weekly basis.

**III. Receipt Reports**

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.*, domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter "A" (*e.g.*, P-18-1234A). The version column designates submissions in sequence as "1", "2", "3", etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANs APPROVED \* FROM 02/01/2019 TO 02/28/2019

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J-19-0017 .....	1	2/1/2019	Danisco US, Inc .....	(G) Production of a chemical substance .....	(G) Genetically modified microorganism for the production of a chemical substance.
P-16-0541A .....	4	1/21/2019	Specialty Organics, Inc.	(S) Adhesive for wood particle/chip/fiber-board.	(S) Soybean meal, reaction products with phosphoric trichloride.
P-16-0584A .....	5	12/17/2018	CBI .....	(G) Additive used to impart specific physico-chemical property(ies) to finished articles.	(G) Multi-walled carbon nanotubes.
P-16-0585A .....	5	12/17/2018	CBI .....	(G) Additive used to impart specific physico-chemical property(ies) to finished articles.	(G) Multi-walled carbon nanotubes.
P-16-0586A .....	5	12/17/2018	CBI .....	(G) Additive used to impart specific physico-chemical property(ies) to finished articles.	(G) Multi-walled carbon nanotubes.

TABLE I—PMN/SNUN/MCANS APPROVED \* FROM 02/01/2019 TO 02/28/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-17-0322A .....	6	12/18/2018	CBI .....	(G) Auxiliary drier, has little drying action in itself but is very useful in combination with active driers. In vehicles that show poor tolerance for lead, calcium can replace part of the lead with a larger amount of calcium to prevent the precipitation of the lead & maintain drying efficiency. Calcium is also useful as pigment wetting & dispersing agents & help to improve hardness & gloss & reduce "Silkins." When ground with drier adsorbing pigments, calcium minimizes loss of dry by being preferentially absorbed.	(G) Zinc naphthenate complexes.
P-18-0007A .....	2	12/17/2018	Nexoleum USA Corp	(S) Used as a plasticizer/stabilizer for flexible PVC.	(S) Glycerides, soya mono- and di-, epoxidized, acetates.
P-18-0008A .....	2	12/17/2018	Nexoleum USA Corp	(S) Used as a plasticizer/stabilizer for flexible PVC.	(S) Glycerides, C16-18 and C18-unsatd. mono- and di-, epoxidized, acetates.
P-18-0012A .....	3	12/17/2018	CBI .....	(G) Adhesives .....	(G) Polyester polyol.
P-18-0020A .....	4	2/1/2019	Myriant Corporation ...	(G) Industrial coating .....	(S) Butanediolic acid, polyol with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-Furandione and 1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester.
P-18-0060A .....	4	1/8/2019	Eastman Chemical Company, Inc.	(S) Surfactant for Liquid Dish; (S) Surfactant for Liquid Laundry; (S) Surfactant for Industrial Hand Wash; (S) FDA related uses; (S) Export only volume of the TSCA manufactured NCS.	(S) 1-Butanaminium, 4-amino-N-(2-hydroxy-3-sulfopropyl)-N, N-dimethyl-4-oxo-, N-coco alkyl derivs., inner salts.
P-18-0070A .....	9	12/18/2018	ArrowStar, LLC .....	(G) Chemical intermediate for polyurethane industry.	(G) Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids.
P-18-0073A .....	5	12/19/2018	Earth Science Laboratories.	(G) Non-Pesticide Agricultural Use Chemical; (S) FIFRA Inert ingredient; (S) Antiscalant; (S) Chlorine stabilizer.	(S) Sulfuric acid, ammonium salt (1:?).
P-18-0107A .....	2	12/13/2018	Lanxess Corporation	(S) Hydrolysis stabilizer .....	(G) Alcohol capped polycarbodiimide from diethyldiisocyanatobenzene.
P-18-0162A .....	5	12/27/2018	CBI .....	(G) Adhesive component .....	(G) Cashew nutshell liquid, polymer with diisocyanatoalkane, substituted-polyoxyalkyldiol and polyether polyol.
P-18-0176A .....	3	2/6/2019	CBI .....	(G) Industrial coating .....	(G) 5-Isobenzofurancarboxylic acid, 1,3-dihydro-1,3-dioxo-, polymer with aminoalcohol, 2,2-dimethyl-1,3-propanediol, 2,5-furandione, polyalkylene glycol and unsaturated anhydride.
P-18-0257A .....	2	1/29/2019	Everris NA, Inc .....	(S) Inorganic Fertilizer .....	(S) Phosphoric acid, potassium salt (2:3).
P-18-0303A .....	3	1/10/2019	CBI .....	(G) UV curable oligomer .....	(G) 2-Propenoic acid, polymer with aliphatic cyclic epoxide.
P-18-0313A .....	3	1/25/2019	Ashland, Inc .....	(G) Adhesive .....	(G) Alkoxyated glycol ether with 1,2-propanediol, reaction products with alkyl alcohol blocked 1,1'-methylenebis [4-isocyanatobenzene] homopolymer and 1,1'-methylenebis [4-isocyanatobenzene].
P-18-0321A .....	3	2/1/2019	CBI .....	(G) Intermediate for use in chemical manufacture.	(G) Poly(oxy-ethanediyl), (methyl ethanediyl)bis[hydroxy-.
P-18-0324A .....	4	12/19/2018	CBI .....	(S) Resin/binder in paint formulations for industrial and architectural applications.	(G) Organic acid dimethyl ester, polymer with mixed alkanediols and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, trimethoxysilylalkylalkylamine-blocked.
P-18-0326 .....	2	2/20/2019	CBI .....	(G) Chemical Intermediate .....	(G) Alkanoic acid, alkyl ester, manuf. of, by-products from, distn. residues.
P-18-0361A .....	3	12/13/2018	Lanxess, Solutions US Inc.	(S) Electrophoretic paint .....	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 1,3,5-tris(6-isocyanatohexyl)-1,3,5-triazine-2,4,6(1H,3H,5H)-trione, 3,5-dimethyl-1H-pyrazole-blocked.
P-18-0363A .....	2	12/12/2018	CBI .....	(G) Adhesive .....	(G) Phenol, polymer with formaldehyde, substituted phenol, sodium salts.
P-18-0365A .....	4	1/9/2019	CBI .....	(G) Superabsorbent polymer; (S) Manufacture for export only.	(G) Starch, carboxymethyl ether, sodium salt, polymer with polycarboxylic acid.
P-18-0366A .....	4	1/9/2019	CBI .....	(G) Superabsorbent polymer; (S) Manufacture for export only.	(G) Starch, carboxymethyl ether, sodium salt, polymer with mixed polycarboxylic acids.
P-18-0384A .....	2	12/23/2018	Sigma-Aldrich Co., LLC.	(S) Starting material for manufacture of 6 Lithium chloride scintillation crystals for use in radiation detection.	(S) Lithium 6.
P-18-0399A .....	4	1/14/2019	CBI .....	(G) Open, non-dispersive use additive for industrial use only.	(G) Rosin adduct ester, polymer with polyols, compd. with ethanolamine.
P-18-0400A .....	4	1/14/2019	CBI .....	(G) Open, non-dispersive use, additive for textile industry.	(G) Rosin adduct ester, polymer with polyols, potassium salt.

TABLE I—PMN/SNUN/MCANS APPROVED \* FROM 02/01/2019 TO 02/28/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-18-0406A .....	2	12/13/2018	CBI .....	(G) Initiator .....	(G) Formaldehyde, polymer with alkyl aryl ketones.
P-19-0002A .....	4	12/19/2018	CBI .....	(S) Chemical Intermediate .....	(G) Polyaromatic symmetrical tetracarboxylic acid.
P-19-0003A .....	3	12/19/2018	CBI .....	(S) Chemical Intermediate .....	(G) Polyaromatic ether symmetrical dicarboxylic anhydride.
P-19-0004A .....	3	12/19/2018	CBI .....	(G) Molded parts and components .....	(G) Aromatic dianhydride, polymer with aromatic diamine and heteroatom bridged aromatic diamine, reaction products with aromatic anhydride.
P-19-0006A .....	3	12/19/2018	CBI .....	(G) Rheology modifier .....	(G) Diisocyanate polymer blocked with alkoxyamine.
P-19-0008A .....	3	12/12/2018	Allnex USA Inc .....	(S) The PMN substance is an isolated intermediate incorporated as a component in several allnex coating resin products that are only applied by Cathodic Electrodeposition (CED) and used as additives for corrosion protection.	(G) Substituted polyalkylenepolycarbomonocycle ester, polymer with dialkanolamine, (hydroxyalkoxy)carbonyl derivs., (alkoxyalkoxy) alkanolblocked.
P-19-0020A .....	3	1/30/2019	CBI .....	(G) Lubricating additive .....	(G) Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs.
P-19-0023A .....	2	12/14/2018	Allnex USA Inc .....	(S) Powder coating resin for industrial application.	(G) Substituted carbomonocycle, polymer with substituted carbomonocycles, dialkyl-alkanediol, alkyl-hydroxyalkyl-alkanediol and alkanedioic acid.
P-19-0038 .....	2	2/4/2019	Allan Chemical Corporation.	(S) Ink carrier for the ceramic industries .....	(S) Fatty acids, coco, iso-Bu esters.
P-19-0039 .....	4	2/11/2019	CBI .....	(S) Stabilizer for PVC .....	(G) Phosphorous acid, P,P '[substituted bis(alkyl-polyalkyl glycol)] Poly carbomonocycle substituted ester.
P-19-0040A .....	2	1/3/2019	CBI .....	(G) Intermediate .....	(G) Alkyl bis(dialkylamino alkyl) amide.
P-19-0048 .....	2	1/30/2019	CBI .....	(G) Coating additive .....	(S) Poly(oxy-1,2-ethanediyl), .alpha.-hydroxy-omega.-hydroxy-, mono-C12-14-alkyl ethers, phosphates, sodium salts.
P-19-0049 .....	1	1/28/2019	Allnex USA Inc .....	(G) Isolated intermediate coating resin .....	(G) Fatty acids, polymers with substituted carbomonocycles, dialkanolamine, alkyl substituted alkanediamine and halo-substituted heteromonocycle, formates (salts).
P-19-0050 .....	1	2/4/2019	Kimes Technologies International, Inc.	(S) Rust preventative .....	(S) Petroleum (petroleum), oxidized, Bu ester.
P-19-0051 .....	1	2/5/2019	CBI .....	(G) UV curable inks .....	(G) 1,3-Propanediamine, N1,N1-dimethyl-, polymers with alkylene glycol ether with alkyltriol (3:1) mixed acrylates and adipates, and alkylene glycol monoacrylate ether with alkyltriol (3:1).
P-19-0052 .....	2	2/8/2019	Evonik Corporation ....	(S) Hard Surface Cleaner .....	(S) Poly(oxy-1,2-ethanediyl), .alpha.-nonyl-omega-hydroxy-, branched and linear.
P-19-0053 .....	1	2/10/2019	Wacker Chemical Corporation.	(S) Used as a surface treatment, sealant, caulk, and coating for mineral building materials such as concrete, brick, limestone, and plaster, as well as on wood, metal and other substrates. Formulations containing the cross-linker provide release and anti-graffiti properties, water repellency, weather proofing, and improved bonding in adhesive/sealant applications. The new substance is a moisture curing cross-linking agent which binds/joins polymers together when cured. Ethanol is released during cure, and once the cure reaction is complete, the product will remain bound in the cured polymer matrix.	(S) 1-Butanamine, N-butyl-N-[(triethoxysilyl)methyl]-.
P-19-0054 .....	1	2/11/2019	CBI .....	(G) automotive lubricant additive .....	(G) Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts.
P-19-0055 .....	1	2/12/2019	Rahn USA Corp .....	(S) The PMN is solely used as a photo initiator within UV curable coating/ink formulations. This photo initiator is starting the polymerization process during the UV curing process of the formulation. The curing is achieved by UV light only, no heat is applied. After curing, the PMN substance is no longer available for exposure or release.	(S) 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with oxirane, 4-(dimethylamino)benzoate.
P-19-0056 .....	1	2/15/2019	CBI .....	(G) The PMN substance will be imported as a raw material for manufacturing other aliphatic hydrocarbons.	(G) Aliphatic hydrocarbons, C8-20-branched and linear.
P-19-0057 .....	1	2/21/2019	CBI .....	(G) Treatment chemical .....	(G) Alkanamine, [(Alkoxy)alkoxy]alkyl] alkyl.

TABLE I—PMN/SNUN/MCANS APPROVED \* FROM 02/01/2019 TO 02/28/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P-19-0060 .....	1	2/23/2019	Neste Oil US, Inc .....	(G) The PMN substance will be used as fuel	(G) Aliphatic hydrocarbons, C8-18-branched and linear.
P-19-0061 .....	1	2/23/2019	Neste Oil US, Inc .....	(G) The PMN substance will be used as fuel	(G) Aliphatic hydrocarbons, C16-20-branched and linear.
P-19-0062 .....	1	2/27/2019	CBI .....	(G) Industrial solvent .....	(G) Hydrochlorofluoroolefin.
SN-18-0002A ...	3	12/12/2018	CBI .....	(G) Flame retardant for textile .....	(G) Phosphoramidic acid, carbomonocyclic-, diphenylester (accession number 261553).
SN-19-0003 ....	1	1/10/2019	CBI .....	(G) Automotive engine fluid additive .....	(G) Silicophosphonate—sodium silicate.
SN-19-0004A ...	3	1/31/2019	CBI .....	(S) A lubricating agent used in the production of automotive disc brakes.	(G) Pitch coke.

\*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90 day review period, and in no way reflects the final status of a complete submission review.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned

to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the

type of amendment (e.g., amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCs APPROVED \* FROM 02/01/2019 TO 02/28/2019

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J-16-0021 .....	12/18/2018	12/4/2018	N .....	(G) Modified trichoderma reesei.
J-18-0026 .....	12/21/2018	11/30/2018	N .....	(G) Biopolymer producing modified microorganism(s), with chromosomally-borne modifications.
J-18-0027 .....	12/21/2018	12/7/2018	N .....	(G) Biopolymer producing modified microorganism(s), with chromosomally-borne modifications.
J-18-0044 .....	12/21/2018	11/26/2018	N .....	(S) Saccharomyces cerevisiae ne095.
J-18-0046 .....	2/14/2019	2/12/2019	N .....	(G) Genetically modified microorganism.
J-19-0003 .....	1/15/2019	1/5/2019	N .....	(G) Strain 2 genetically modified microorganism.
P-08-0431 .....	2/12/2019	1/26/2019	N .....	(S) Propane, 2,2-bis(methylthio)-.
P-14-0443 .....	1/23/2019	12/24/2018	N .....	(G) Alkane-alpha,omega-diyl bis{[(trimethoxysilyl)propyl]carbamate}.
P-14-0519 .....	2/15/2019	2/6/2019	N .....	(S) Siloxanes and silicones, di-me, hydrolysis products with dichloro ethenylmethylsilane, 3-[2-(2-methoxyethoxy)ethoxy]propyl group terminated.
P-15-0178 .....	1/23/2019	1/21/2019	N .....	(G) Long chain aliphatic acid polymers, with adipic acid, di-meterephthalate, alkane acid, aromatic isocyanate and neopentyl glycol.
P-16-0150 .....	12/20/2018	11/29/2018	N .....	(G) Chlorofluorocarbon.
P-16-0173A .....	12/20/2018	6/6/2016	Update CBI substantiation for site .....	(G) Aminoalkyl alaninate sodium salt (1:1), polymer with alkyldiol, dialkyl-alkanediol, alkyldioic acid, alkyldiol, polyol, cycloaliphatic diisocyanate, polyalkylene glycol mono-alkyl ether-blocked.
P-16-0366A .....	2/27/2019	11/28/2017	Update CBI substantiation for manufacturing plant site, submitter and technical contact.	(G) Isocyanic acid, polymethylenepolyphenylene ester, polymer with alkanolamine and alkylcarbonate, alkoxyethanol-blocked.
P-16-0514 .....	1/22/2019	1/16/2019	N .....	(G) Mixed metal oxide.
P-16-0575 .....	1/7/2019	1/3/2019	N .....	(S) Glucosyltransferase.
P-16-0581 .....	1/24/2019	1/22/2019	N .....	(G) Polysaccharide.
P-16-0592 .....	2/25/2019	2/25/2019	N .....	(S) Fatty acids, C8-C10, diesters with alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl).
P-17-0014 .....	2/25/2019	2/25/2019	N .....	(S) Fatty acids, C8-C10, mixed esters with c18-unsatd. fatty acid dimers and alpha-hydro-omega-hydroxypoly(oxy-1,4-butanediyl).
P-17-0261 .....	1/22/2019	12/11/2018	N .....	(S) Benzoylbenzoate, esters with branched polyols.
P-17-0261A .....	2/12/2019	12/11/2018	Specific chemical name updated .....	(S) Poly(oxy-1,2-ethanediyl),alpha-(2-benzoylbenzoyl)-omega-[(2-benzoylbenzoyl)oxy]-.
P-17-0261A .....	2/27/2019	12/11/2018	Specific name CAS number updated	(S) Poly(oxy-1,2-ethanediyl),alpha-(2-benzoylbenzoyl)-omega-[(2-benzoylbenzoyl)oxy]-.
P-17-0320 .....	1/17/2019	1/15/2019	N .....	(G) Dodecanedioic acid and 1,6-hexane diol polymer with 3-hydroxy-2,2-dimethylpropyl 2,2-dimethylhydracrylate, neopentylglycol, 1,2 ethanediol, adipic acid, isophthalic acid, terephthalic acid, 2-oxooxopane, bayflex 2002h and 1,1'-methylenebis(isocyanatobenzene)].
P-18-0068 .....	1/2/2019	12/21/2018	N .....	(G) Metal, alkylcarboxylate oxo complexes.
P-18-0077 .....	1/11/2019	12/18/2018	N .....	(S) Urea, reaction products with N-butylphosphorothioic triamide and form-aldehyde.
P-18-0082 .....	2/6/2019	1/9/2019	N .....	(G) Aspartic acid, tallow modified diester.
P-18-0088 .....	1/3/2019	1/2/2019	N .....	(G) Quaternary ammonium salt.
P-18-0116 .....	1/7/2019	12/18/2018	N .....	(S) Castor oil, reaction products with soybean oil.
P-18-0224 .....	1/9/2019	12/13/2018	N .....	(G) Alkenoic acid, polymer with alkenylcarbomonocycle, [alkanediylbis(substitutedalkylene)] bis[heteromonocycle] and (alkylalkenyl) aromatic, salt.
P-18-0225 .....	1/9/2019	12/13/2018	N .....	(G) Alkenoic acid, polymer with substituted alkyloxirane, alkenylcarbomonocycle, alkyl substituted alkyl alkanediol and (alkylalkenyl) aromatic salt.
P-18-0319 .....	2/18/2019	1/29/2019	N .....	(G) Plant oil fatty acids, alkyl esters.

TABLE II—NOCS APPROVED \* FROM 02/01/2019 TO 02/28/2019—Continued

Case No.	Received date	Commence-ment date	If amendment, type of amendment	Chemical substance
P-18-0324 .....	1/16/2019	12/23/2018	N .....	(G) Organic acid dimethyl ester, polymer with mixed alkanediols and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, trimethoxysilylalkylamine-blocked.

\*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III. of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that have passed an initial screening by EPA during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 02/01/2019 TO 02/28/2019

Case No.	Received date	Type of test information	Chemical substance
P-19-0019 .....	2/4/2019	In Vitro Skin Corrosion: Reconstructed Human Epidermis (RHE) Test Method (OECD Test Guideline 431).	(G) haloalkane.
P-18-0306 .....	2/6/2019	Bacterial Reverse Mutation Test/Ames Assay (OECD Test Guideline 471) and Genetic Toxicology: Micronucleus Test (OECD Test Guideline 474).	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with butyl 2-propenoate, ethenylbenzene and 2-oxiranylmethyl 2-methyl-2-propenoate.
P-19-0033 .....	2/8/2019	Bacterial Reverse Mutation Test/Ames Assay (OECD Test Guideline 471), Acute Oral Toxicity (OECD Test Guideline 420).	(G) sulfonium, triphenyl-, 5-(alkyl) fluoropentane derivative.
P-19-0054 .....	2/12/2019	Acute Oral Toxicity (OECD Test Guidelines 423), Acute Dermal Toxicity (OECD Test Guidelines 402), Acute Eye Irritation (OECD Test Guidelines 405), Bovine Corneal Opacity Permeability (OECD Test Guidelines 437), Acute Dermal Irritation (OECD Test Guidelines 404), In Vitro Skin Irritation (OECD Test Guidelines 439), In Vitro Skin Corrosion (OECD Test Guidelines 431), Skin Sensitization (OECD Test Guidelines 406), Bacterial Reverse Mutation Test/Ames Assay (OECD Test Guideline 471), In Vitro Mammalian Chromosome Aberration (OECD Test Guideline 473), In Vitro Mammalian Cell Gene Mutation (OECD Test Guideline 490), Combined Repeated Dose Toxicity With The Reproduction/Development Toxicity Screening Test (OECD Test Guideline 422), and Toxicokinetic Assessment.	(G) polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts, polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts.
P-11-0264 .....	2/13/2019	Anaerobic Aquatic Metabolism (U.S. EPA Series 835—Fate, Transport And Transformation Test Guidelines OPPTS 835.4400).	(G) brominated polyphenyl ether.
P-16-0543 .....	2/13/2019	Exposure Monitoring Report .....	(G) halogenophosphoric acid metal salt.
P-16-0410 .....	2/14/2019	In Vitro Skin Irritation (OECD Test Guidelines 439), In Vitro Skin Corrosion (OECD Test Guidelines 431).	(G) phosphonic acid, [(hydroxycyclosiloxanediyl) alkanediyl] dialkyl ester, alkali metal salt, reaction products with alkali metal silicate.
P-18-0170 .....	2/14/2019	Bacterial Reverse Mutation Test/Ames Assay (OECD Test Guideline 471).	(S) 1-propanaminium, N,N'-(oxydi-2,1-ethanediyl)bis[3-chloro-2-hydroxy-N,N-dimethyl-, dichloride.
P-18-0128 .....	2/15/2019	In Vitro Skin Irritation (OECD Test Guidelines 439), In-Vitro Eye Irritation (OECD Test Guidelines 492).	(S) inulin, 2-hydroxy-3-(trimethylammonio)propyl ether, chloride.
P-16-0581 .....	2/20/2019	Biosolubility In Simulated Lung Fluids .....	(G) polysaccharide.

TABLE III—TEST INFORMATION RECEIVED FROM 02/01/2019 TO 02/28/2019—Continued

Case No.	Received date	Type of test information	Chemical substance
P-18-0321 .....	2/20/2019	In Vitro Mutagenesis Studies: 3-Test Battery, Guinea Pig Maximization Test, Acute toxicity to the marine alga <i>Skeletonema costatum</i> , Acute Toxicity to <i>Acartia tonsa</i> , Acute toxicity to <i>Acartia tonsa</i> , acute toxicity to juvenile turbot, marine algal inhibition test, Ready Biodegradability (OECD Test Guidelines 301F), Toxicological tests on polyglycol E-400, Evaluation of polyglycol E-400 in the aquatic environment, skin irritation and skin sensitization, Ready Biodegradability (OECD Test Guidelines 301), EFAST Report, EPI suite (2) Reports, IRER Results, Oncologic Profiler in OECD QSAR Toolbox Results, Justification for Hazard Determination, Sustainable Futures Summary Assessment Using P2 Framework Models, Opinion of the Scientific Panel on Food Additives, Flavourings, Processing Aids and Materials. Literature Articles: Fruijtier-Polloth, Hermansky et al., Herold 1989 ADH PEGs, JECFA WHO Summary, Biodegradation of Polyethers (PG, PPG, PTMG, and Others) by Dr. Kawai, Subacute Tox and Irritation of PEG by Smyth, Chronic Oral Tox of PEGs by Smyth.	(G) poly(oxy-ethanediyl), (methyl ethanediyl)bis[hydroxy-.
P-18-0124 .....	2/21/2019	Daphnid Chronic Toxicity Test (OECD Test Guidelines 202), Alga Growth Inhibition (OECD Test Guidelines 201), Fish Acute Toxicity Test, Freshwater And Marine (OECD Test Guidelines 203).	(S) lithium nickel potassium oxide.
P-05-0107 .....	2/26/2019	Aerobic Transformation In Aquatic Sediment Systems (OECD Test Guidelines 308).	(G) perfluoroalkylethyl methacrylate copolymer organic acid salt.
P-05-0075 .....	2/26/2019	Aerobic Transformation In Aquatic Sediment Systems (OECD Test Guidelines 308).	(G) perfluoroalkylethyl methacrylate copolymer.
P-06-0388 .....	2/26/2019	Aerobic Transformation In Aquatic Sediment Systems (OECD Test Guidelines 308).	(G) perfluoroalkylethylmeth-acrylate copolymer.
P-00-0281 .....	2/28/2019	Freshwater AAP Algal Medium, Daphnia Sp. Acute Immobilisation Test (OECD Test Guideline 202), A 96-Hour Static Acute Toxicity Test with The Fathead Minnow (OECD Test Guideline 203), A 96-Hour Toxicity Test with the Freshwater Alga (OECD Test Guideline 201), and Surface Tension of Aqueous Solutions (OECD Test Guideline 115).	(G) alkylarylsulfonic acid, sodium salts.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: April 19, 2019.

**Pamela Myrick,**

*Director, Information Management Division,  
Office of Pollution Prevention and Toxics.*

[FR Doc. 2019-09378 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R08-OW-2019-0219; FRL-9992-88-Region 8]

### Proposed Issuance of National Pollutant Discharge Elimination System General Permit for Wastewater Discharges Associated With Drinking Water Production Located in the EPA Region 8 Indian Country; Correction

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

**ACTION:** Notice of availability for comment; correction.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 8 is correcting the docket number for a notice of availability for comment that appeared in the **Federal Register** on April 18, 2019. The notice requested comments on the draft 2019 National Pollutant Discharge Elimination System (NPDES)

drinking water general permit (DWGP) for wastewater discharges associated with drinking water treatment plants. The DWGP will authorize wastewater discharges from drinking water facilities located in Indian country in the EPA Region 8 in accordance with the terms and conditions described therein. This is the first issuance of the DWGP. EPA proposes to issue the permit for five (5) years and is seeking comment on the draft permit. The correct docket number appears in the heading and the **DATES** and **ADDRESSES** sections read correctly, below.

**DATES:** Comments must be received, in writing, on or before May 28, 2019.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OW-2019-0219, by the following method:

*http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Once submitted, comments cannot be edited or removed from [www.regulations.gov](http://www.regulations.gov). The EPA may publish any comment received. Do not submit information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://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](http://www.regulations.gov) or in hard copy at the Wastewater 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:** Paul Garrison, Wastewater Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8WD-CW-W, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6016, [garrison.paul@epa.gov](mailto:garrison.paul@epa.gov).

**SUPPLEMENTARY INFORMATION:** Please refer to the **Federal Register** of Thursday April 18, 2019, pages 16259-16260, to read the **SUPPLEMENTARY INFORMATION** in its entirety.

(Authority: Clean Water Act, 33 U.S.C. 1251, *et seq.*)

Dated: May 2, 2019.

**Darcy O'Connor,**  
Director, Water Division.

[FR Doc. 2019-09388 Filed 5-7-19; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0010 and OMB 3060-0084]

### Information Collections Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before July 8, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

#### SUPPLEMENTARY INFORMATION:

**OMB Control Number:** 3060-0010.  
**Title:** Ownership Report for Commercial Broadcast Stations, FCC Form 323; Section 73.3615, Ownership

Reports; Section 74.797, Biennial Ownership Reports.

**Form Number:** FCC Form 323.

**Type of Review:** Extension of a currently approved collection.

**Respondents:** Business or other for-profit entities; not-for-profit institutions; State, Local, or Tribal Governments.

**Number of Respondents:** 4,340 respondents; 4,340 responses.

**Estimated Time per Response:** 1.5 to 2.5 hours.

**Frequency of Response:** On occasion reporting requirement; biennial reporting requirement.

**Obligation To Respond:** Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 309, and 310.

**Total Annual Burden:** 9,620 hours.

**Total Annual Cost:** \$10,125,160.

**Privacy Impact Assessment:** The Commission is drafting a Privacy Impact Assessment (PIA) for the personally identifiable information (PII) that is covered by the system of records notice (SORN), FCC/MB-1, Ownership Reports for Commercial and Noncommercial Broadcast Stations. Upon completion of the PIA, it will be posted on the FCC's website, as required by the Office of Management and Budget (OMB) Memorandum, M-03-22 (September 22, 2003).

**Nature and Extent of Confidentiality:** FCC Form 323 collects two types of information from respondents: PII in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The FCC/MB-1 SORN, which was approved on November 28, 2016 (81 FR 72047), covers the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323, as required under the Privacy Act of 1974, as amended (5 U.S.C. 552a). FCC Form 323 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the Commission has in place to protect the PII.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060-0917). Form 160 currently requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic Commission Registration System (CORES) then provides each registrant with a CORES FRN, which identifies the registrant in his/her subsequent dealings with the FCC. This is done to protect the individual's privacy.

FCC Form 160 also enables applicants to obtain a Restricted Use FRN, which may be used on Form 323 to identify an individual reported as an attributable interest holder. Form 160 requires applicants for Restricted Use FRNs to provide an alternative set of identifying information that does not include the individual's full SSN: His/her full name, residential address, date of birth, and only the last four digits of his/her SSN. Restricted Use FRNs may be used in lieu of CORES FRNs only on broadcast ownership reports and only for individuals (not entities) reported as attributable interest holders.

The Commission maintains a SORN, FCC/OMD-25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

*Needs and Uses:* Licensees of commercial AM, FM, and full power television broadcast stations, as well as licensees of Class A and Low Power Television broadcast stations, must file FCC Form 323 every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323 shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of commercial AM, FM, and full power television broadcast stations must file Form 323 following the consummation of a transfer of control or an assignment of a commercial AM, FM, or full power television broadcast station license or construction permit; a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 within 30 days after the grant of the construction permit; and a Permittee of a new commercial AM, FM, or full power television broadcast station must file Form 323 to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323 must be filed for each entity in the organizational structure that has an attributable interest in the Licensee or Permittee.

*OMB Control Number:* 3060-0084.

*Title:* Ownership Report for Noncommercial Educational Broadcast Stations, FCC Form 323-E; Section 73.3615, Ownership Reports.

*Form Number:* FCC Form 323-E.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Not-for-profit institutions.

*Number of Respondents:* 2,636 respondents; 2,636 responses.

*Estimated Time per Response:* 1 to 1.5 hours.

*Frequency of Response:* On occasion reporting requirement; biennial reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for these collections are contained in 47 U.S.C. 151, 152(a), 154(i), 257, 303(r), 307, 308, 309, and 310.

*Total Annual Burden:* 3,867 hours.

*Total Annual Cost:* \$2,319,900.

*Privacy Impact Assessment:* The Commission is drafting a Privacy Impact Assessment (PIA) for the personally identifiable information (PII) that is covered by the system of records notice (SORN), FCC/MB-1, Ownership Reports for Commercial and Noncommercial Broadcast Stations. Upon completion of the PIA, it will be posted on the FCC's website, as required by the Office of Management and Budget (OMB) Memorandum, M-03-22 (September 22, 2003).

*Nature and Extent of Confidentiality:* FCC Form 323-E collects two types of information from respondents: PII in the form of names, addresses, job titles and demographic information; and FCC Registration Numbers (FRNs).

The FCC/MB-1 SORN, which was approved on November 28, 2016 (81 FR 72047), covers the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 323-E, as required under the Privacy Act of 1974, as amended (5 U.S.C. 552a). FCC Form 323-E includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the Commission has in place to protect the PII.

FRNs are assigned to applicants who complete FCC Form 160 (OMB Control No. 3060-0917). Form 160 currently requires applicants for FRNs to provide their Taxpayer Information Number (TIN) and/or Social Security Number (SSN). The FCC's electronic Commission Registration System (CORES) then provides each registrant with a CORES FRN, which identifies the registrant in his/her subsequent dealings

with the FCC. This is done to protect the individual's privacy.

FCC Form 160 also enables applicants to obtain a Restricted Use FRN, which may be used on Form 323-E to identify an individual reported as an attributable interest holder. Form 160 requires applicants for Restricted Use FRNs to provide an alternative set of identifying information that does not include the individual's full SSN: His/her full name, residential address, date of birth, and only the last four digits of his/her SSN. Restricted Use FRNs may be used in lieu of CORES FRNs only on broadcast ownership reports and only for individuals (not entities) reported as attributable interest holders.

The Commission maintains a SORN, FCC/OMD-25, Financial Operations Information System (FOIS), to cover the collection, purpose(s), storage, safeguards, and disposal of the PII that individual respondents may submit on FCC Form 160. FCC Form 160 includes a privacy statement to inform applicants (respondents) of the Commission's need to obtain the information and the protections that the FCC has in place to protect the PII.

*Needs and Uses:* Licensees of noncommercial educational AM, FM, and television broadcast stations must file FCC Form 323-E every two years. Biennial Ownership Reports shall provide information accurate as of October 1 of the year in which the Report is filed. Form 323-E shall be filed by December 1 in all odd-numbered years.

In addition, Licensees and Permittees of noncommercial educational AM, FM, and television broadcast stations must file Form 323-E following the consummation of a transfer of control or an assignment of a noncommercial educational AM, FM, or television broadcast station license or construction permit; a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323-E within 30 days after the grant of the construction permit; and a Permittee of a new noncommercial educational AM, FM, or television broadcast station must file Form 323-E to update the initial report or to certify the continuing accuracy and completeness of the previously filed report on the date that the Permittee applies for a license to cover the construction permit.

In the case of organizational structures that include holding companies or other forms of indirect ownership, a separate Form 323-E must be filed for each entity in the organizational structure that has an

attributable interest in the Licensee or Permittee.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2019-09429 Filed 5-7-19; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0599]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before July 8, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

#### SUPPLEMENTARY INFORMATION:

*OMB Control No.:* 3060-0599.

*Title:* Section 90.187, Trunking in the Bands Between 150-512 MHz; and Sections 90.425 and 90.647, Station Identification.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents and Responses:* 4,180 respondents and 4,180 responses.

*Estimated Time per Response:* 0.25-3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 154(i), 309(j) and 332, as amended.

*Total Annual Burden:* 4,360 hours.

*Annual Cost Burden:* No cost.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* The information contained in this collection sets forth frequency coordination requirements under Section 90.187, and station identification requirements under Section 90.647 and 90.425. The information requested in this collection is used by the Commission staff to enable the FCC to evaluate the accuracy of frequency coordination pursuant to its rule under 47 CFR 90.187, 90.425 and 90.647.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2019-09428 Filed 5-7-19; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1155]

### Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments should be submitted on or before June 7, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, OMB, via email [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov); and to Nicole Ongele, FCC, via email [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4)

select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

*OMB Control Number:* 3060–1155.

*Title:* Sections 15.713, 15.714, 15.715, 15.717, 27.1320, TV White Space Broadcast Bands.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents and Responses:* 1,510 respondents; 3,500 responses.

*Estimated Time per Response:* 2 hours.

*Frequency of Response:* On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 302, 303(c), 303(f), and 307 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 7,000 hours.

*Total Annual Cost:* \$151,000.

*Privacy Act Impact Assessment:* No Impact(s).

*Nature and Extent of Confidentiality:* The Commission is not requesting respondents to submit confidential information to the Commission. Respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission is submitting this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance.

On July 13, 2017, the Commission adopted an Order on Reconsideration in ET Docket Nos. 14–165 and 14–166, FCC 17–95, that addressed wireless microphone issues (2017 Wireless Microphone Order). Because the date the Commission specified in the 2015 White Spaces R&O for ending registration of unlicensed wireless microphones in the white space database had passed with the release of the Channel Reassignment Public Notice on April 13, 2017, the Order removed and reserved Section 15.713(j)(9) that had previously allowed such registrations.

The white space rules as amended by the 2015 White Spaces R&O require that each white space database administrator shall:

(a) Maintain a database that contains the information described in § 15.713 of the rules. The database must include information on protected entities and services, including TV stations, Broadcast Auxiliary Services, Private Land Mobile and Commercial Radio Service operations, part 74 Low Power Auxiliary Stations such as wireless microphones, the locations where part 27 600 MHz service licensees have commenced operation, and the locations of health care facilities that use WMTS equipment operating on channel 37. (Section 15.715(a));

(b) Establish a process for acquiring and storing in the database necessary and appropriate information from the Commission's databases and synchronizing the database with the current Commission databases at least once a week to include newly licensed facilities or any changes to licensed facilities (Section 15.715(b));

(c) Establish a process for registering fixed white space devices and registering and including in the database those facilities entitled to protection but not contained in a Commission database, including Multi-channel Video Programming Distributor (MVPD) receive sites. The database administrators must establish procedures to allow part 27 600 MHz service licensees to upload, modify and replace registration information for

areas where they have commenced operations; allow health care facilities to register the locations of facilities where they operate WMTS networks on channel 37; and to allow unlicensed wireless microphone users in the 600 MHz band to register with the database and to provide lists of channels available for wireless microphones at a given location (Sections 15.715(n), (p) and (q)). Database administrators must remove from the database the registrations of fixed white space devices that have not checked the database for at least three months to update their channel lists (Section 15.715(o));

(d) Establish a process for registering facilities where part 74 low power auxiliary devices are used on a regular basis (Sections 15.713(j)(8) and 15.715(d));

(e) Provide accurate automated information regarding available channels to fixed and personal/portable white space devices that submit to the database the information required under § 15.713(e), (g) and (h) based on the geographic location of the device; and provide accurate automated information regarding available channels to fixed and Mode II devices requesting information regarding available channels for Mode I devices. Database administrators may allow prospective operators of white space devices to query the database and determine if there are vacant channels at a particular location (Section 15.715(e)); (f) Establish protocols and procedures to ensure that all automated communications and interactions between the database and white space devices are accurate and secure and that unauthorized parties cannot access or alter the database or the information regarding available channels sent to a white space device consistent with the provisions of Section 15.713(l) (Section 15.715(f));

(g) Make database services available to all unlicensed white space device users on a non-discriminatory basis (Section 15.715(g));

(h) Provide service for a five-year term. This term can be renewed at the Commission's discretion (Section 15.715(h));

(i) Respond in a timely manner to verify, correct and/or remove, as appropriate, data in the event that the Commission or a party brings a claim of inaccuracies in the database to the attention of the administrator. This requirement applies only to information that the Commission requires to be stored in the database (Section 15.715(i));

(j) Transfer the database, along with the IP addresses and URLs used to

access the database and data for registered fixed and personal/portable white space devices, to another designated entity in the event it does not continue as the database administrator at the end of its term (Section 15.715(j));

(k) The database must have functionality such that upon request from the Commission it can indicate that no channels are available when queried by a specific white space device or model of white space device (Section 15.715(k));

(l) If more than one database is developed, the database administrators must cooperate to develop a standardized process for providing on a daily basis or more often, as appropriate the data collected for the facilities listed in § 15.713(b)(2) to all other white space databases to ensure consistency in the records of protected facilities (Section 15.715(l));

(m) The database administrator may charge a fee for provision of lists of available channels to fixed and personal/portable devices and for registering fixed devices. This provision applies to devices that operate in the TV bands, 600 MHz service band, and the 600 MHz guard bands and duplex gap. A white space database administrator may also charge a fee for provision of lists of available channels to wireless microphone users. (Section 15.714).

To receive interference protection, 600 MHz licensees must notify one of the white space database administrators of the areas where they have commenced operation pursuant to §§ 15.713(j)(10) and 15.715(n) of this chapter (Section 27.1320).

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2019-09427 Filed 5-7-19; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-0423 and OMB 3060-0473]

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

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

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal

Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before July 8, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-0473.

*Title:* Section 74.1251, Technical and Equipment Modifications.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities; not-for-profit institutions.

*Number of Respondents and Responses:* 100 respondents; 300 responses.

*Estimated Time per Response:* 0.25 hour.

*Frequency of Response:* Recordkeeping requirement; One-time reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 75 hours.

*Total Annual Cost:* None.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:*

There is no need for confidentiality with this collection of information.

*Needs and Uses:* The information collection requirements contained in 47 CFR 74.1251(b)(1) state that formal application on FCC Form 349 is required of all permittees and licensees for any of the following changes: Replacement of the transmitter as a whole, except replacement with a transmitter of identical power rating which has been certificated by the FCC for use by FM translator or FM booster stations, or any change which could result in the electrical characteristics or performance of the station. Upon the installation or modification of the transmitting equipment for which prior FCC authority is not required under the provisions of this paragraph, the licensee shall place in the station records a certification that the new installation complies in all respects with the technical requirements of this part and the terms of the station authorization.

The information collection requirements contained in 47 CFR 74.1251(c) require FM translator licensee to notify the FCC, in writing, of changes in the primary FM station being retransmitted.

*OMB Control Number:* 3060-0423.

*Title:* Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents and Responses:* 50 respondents; 50 responses.

*Estimated Time per Response:* 20 minutes.

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is Section 154(i) of the Communications Act of 1934, as amended.

*Total Annual Burden:* 17 hours.

*Total Annual Cost:* \$63,750.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:*

There is no need for confidentiality with this collection of information.

*Needs and Uses:* The information collection requirements contained in 47 CFR 73.3588 state whenever a petition to deny or an informal objection has been filed against any applications for

renewal, new construction permits, modifications, and transfers/ assignments, and the filing party seeks to dismiss or withdraw the petition to deny or the informal objection, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal. This request must include the following documents: (1) A copy of any written agreement related to the dismissal or withdrawal, (2) an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, (3) an itemization of the expenses for which it is seeking reimbursement, and (4) the terms of any oral agreements related to the dismissal or withdrawal of the petitions to deny. Each remaining party to any written or oral agreement must submit an affidavit within 5 days of petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The affidavit must also include the terms of any oral agreements relating to the dismissal or withdrawal of the petition to deny.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2019-09430 Filed 5-7-19; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

May 6, 2019.

**TIME AND DATE:** 10:00 a.m., Wednesday, May 22, 2019.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument in the matter *Secretary of Labor v. Solar Sources Mining, LLC*, Docket No. LAKE 2017-52. (Issues include whether the Secretary possesses unreviewable discretion to withdraw a specially assessed proposed penalty.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

### CONTACT PERSON FOR MORE INFO:

Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

### PHONE NUMBER FOR LISTENING TO

**MEETING:** 1-(866) 867-4769, Passcode: 678-100.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2019-09606 Filed 5-6-19; 4:15 pm]

**BILLING CODE 6735-01-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

May 6, 2019.

**TIME AND DATE:** 10:00 a.m., Thursday, May 23, 2019.

**PLACE:** The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor v. Solar Sources Mining, LLC*, Docket No. LAKE 2017-52. (Issues include whether the Secretary possesses unreviewable discretion to withdraw a specially assessed proposed penalty.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

### CONTACT PERSON FOR MORE INFO:

Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

### PHONE NUMBER FOR LISTENING TO

**MEETING:** 1-(866) 867-4769, Passcode: 678-100.

**Sarah L. Stewart,**

*Deputy General Counsel.*

[FR Doc. 2019-09604 Filed 5-6-19; 4:15 pm]

**BILLING CODE 6735-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60-Day-19-1132; Docket No. CDC-2019-0035]

### Proposed Data Collection Submitted for Public Comment and Recommendations

**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), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Performance Progress and Monitoring Report (PPMR). This collection of information assists CDC in being responsible for the stewardship of funds provided via contracts, grants, and cooperative agreements, from CDC to partners throughout the world, while providing excellent, professional services to our partners and stakeholders.

**DATES:** CDC must receive written comments on or before July 8, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2019-0035 by any of the following methods:

- *Federal eRulemaking Portal:* [Regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329.

*Instructions:* All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [Regulations.gov](https://www.regulations.gov).

*Please note: Submit all comments through the Federal eRulemaking portal ([regulations.gov](https://www.regulations.gov)) or by U.S. mail to the address listed above.*

**FOR FURTHER INFORMATION:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and

Prevention, 1600 Clifton Road NE, MS-D74, Atlanta, Georgia 30329; phone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.
5. Assess information collection costs.

**Proposed Project**

Performance Progress and Monitoring Report (PPMR) (OMB Control No. 0920-

1132, Expiration 08/31/2019)—Revision—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

Each year, approximately 80% of the Centers for Disease Control and Prevention's (CDC) budget is distributed via contracts, grants and cooperative agreements, from the Office of Financial Resources (OFR) to partners throughout the world in an effort to promote health, prevent disease, injury and disability and prepare for new health threats. OFR is responsible for the stewardship of these funds while providing excellent, professional services to our partners and stakeholders.

Currently, CDC uses the Performance Progress and Monitoring Report (PPMR—OMB Control Number: 0920-1132, Expiration Date: 08/31/2019), a progress report form for Non-Research awards to collect information semi-annually from Awardees regarding the progress made over specified time periods on CDC funded projects. The PPMR was originally modified from SF-PPR (OMB Control Number: 0970-0406, Expiration Date: 10/31/2015), a similar progress report that was owned by the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS). The PPMR was created by CDC to provide an agency-wide collection tool that would be able to obtain data on the progress of CDC Awardees for the purposes of evaluation, and to bring the Awardee reporting procedure into compliance with the Paperwork Reduction Act (PRA).

The information collected enables the accurate, reliable, uniform, and timely submission to CDC of each Awardee's work plans and progress reports, including strategies, activities and performance measures. The information collected by the PPMR is designed to align with, and support the goals outlined for each of the CDC Awardees. Collection and reporting of the

information will occur in an efficient, standardized, and user-friendly manner that will generate a variety of routine and customizable reports. The PPMR will allow each Awardee to summarize activities and progress towards meeting performance measures and goals over a specified time period specific to each award. CDC will also have the capacity to generate reports that describe activities across multiple Awardees. In addition, CDC will use the information collection to respond to inquiries from HHS, Congress and other stakeholder inquiries about program activities and their impact.

This Revision request is being submitted to allow CDC to continue collection of this valuable information from Awardees for an additional three years, and to amend the procedures by which the information can be collected. Currently, the submission process requires Awardees to submit a completed PDF version of the PPMR by uploading it to [www.grants.gov](http://www.grants.gov) in accordance with program guidance and award terms and conditions. While this method will continue to be utilized, CDC now requests that Awardees be permitted to submit the PPMR, and associated forms directly to the Programs that will be performing the evaluation. This method of submission will occur via the use of a fillable PDF and Excel-based versions of the PPMR Reporting Tool.

Use of this mechanism and the ability of Awardees to submit information related to program evaluation directly to evaluators is expected to greatly increase the use of the PPMR and its associated forms. Centers, Institutes and Offices within CDC will use the PPMR with varying frequency, however with the opportunity to submit evaluation information directly, the total number of responses per year could be increased by 2,000. The total annual burden is estimated to increase to 13,014 hours. There is no cost to 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)	Total burden (in hours)
CDC Award Recipients .....	Performance Progress and Monitoring Report (PPMR)—Att. A-F.	5,200	1	2	10,400
CDC Award Recipients .....	Performance Progress and Monitoring Report (PPMR)—Att. G.	1,632	1	5/60	136
NHSS Award Recipients .....	Performance Progress and Monitoring Report (PPMR)—Att. A-F.	60	1	41	2,478
Total .....	.....	.....	.....	.....	13,014

Jeffrey M. Zirger,

Lead, Information Collection Review Office,  
Office of Scientific Integrity, Office of Science,  
Centers for Disease Control and Prevention.

[FR Doc. 2019-09463 Filed 5-7-19; 8:45 am]

BILLING CODE 4163-19-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Docket No. CDC-2019-0039]

#### Vessel Sanitation Program: Annual Program Status Meeting; Request for Comment

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of public meeting and request for comment.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the 2019 annual Vessel Sanitation Program (VSP) public meeting. The annual meeting serves as a forum for HHS/CDC to update cruise industry representatives and other interested persons on work completed in 2018 and plans for future activities. HHS/CDC is also opening a public docket so that written comments and materials regarding VSP's 2018 and future work may be submitted. The official record of this meeting will remain open through July 26, 2019, so that comments related to the topics discussed at the meeting may be submitted and made part of the record.

**DATES:** Written comments must be received on or before July 26, 2019.

The meeting will be held from 9:00 a.m. to 4:30 p.m. on June 27, 2019, in the Ballroom at the DoubleTree Grand Hotel Biscayne Bay, 1717 North Bayshore Drive, Miami, FL 33132. Information regarding logistics is available on the VSP website ([www.cdc.gov/nceh/vsp](http://www.cdc.gov/nceh/vsp)).

**Deadline for Requests for Special Accommodations:** Persons wishing to participate in the public meeting who need special accommodations should contact Commander Aimee Treffiletti ([vsp@cdc.gov](mailto:vsp@cdc.gov) or 954-356-6650 or 770-488-3141) by June 25, 2019.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2019-0039, by any of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.

- **Mail:** Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS F-58, Atlanta, Georgia 30341.

**Instructions:** All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Commander Aimee Treffiletti, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS F-58, Atlanta, Georgia 30341; phone: 954-356-6650 or 770-488-3141; email: [vsp@cdc.gov](mailto:vsp@cdc.gov).

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to inform the public of VSP's activities to help the cruise industry prevent the introduction and spread of gastrointestinal (GI) illness to U.S. ports from ships under VSP's jurisdiction. Ships under VSP jurisdiction have 13 or more passengers and an itinerary that includes foreign and U.S. ports.

The meeting will include a review of HHS/CDC's public health support activities from 2018, provide perspective on VSP's approach to vessel sanitation, and offer industry the opportunity to provide input regarding industry efforts to exceed VSP requirements. Presentations will clarify the roles and responsibilities of VSP, cruise line public health management, and shipyards constructing cruise ships. Presentations will also include initiatives for improved epidemiologic study of disease outbreaks and strategic approaches to public health risk reduction for 2020 and the future.

#### Matters To Be Discussed

- VSP year in review: Operational and construction inspections, budget, and vessel sanitation training
- GI illness data and epidemiology projects: VSP review and progress report
- VSP 2018 Operations Manual and Construction Guidelines: Implementation of the new guidance

- Shipyard construction: How to strengthen public health through engineering controls

**Meeting Accessibility:** The meeting is open to the public, but space is limited to approximately 70 people. Advanced registration is required. Information regarding logistics is available on the VSP website ([www.cdc.gov/nceh/vsp](http://www.cdc.gov/nceh/vsp)). Attendees at the annual meeting normally include cruise ship industry officials, private sanitation consultants, and other interested parties.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019-09393 Filed 5-7-19; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[OMB No.: 0970-0379]

#### Submission for OMB Review; Comment Request

**Title:** ANA Project Outcome Assessment Survey.

**Description:** The information collected by the Project Outcome Assessment Survey is needed for two main reasons: 1) To collect crucial information required to report on the Administration for Native Americans' (ANA) established Government Performance and Results Act (GPRA) measures, and 2) to properly abide by ANA's congressionally-mandated statute (42 United States Code 2991 *et seq.*) found within the Native American Programs Act of 1974, as amended, which states that ANA will evaluate projects assisted through ANA grant dollars "including evaluations that describe and measure the impact of such projects, their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanisms for delivery of services." The information collected with this survey will fulfill ANA's statutory requirement and will also serve as an important planning and performance tool for ANA.

**Respondents:** Tribal Governments, Native American nonprofit organizations, and Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ANA Project Outcome Assessment Survey .....	85	1	6	510

*Estimated Total Annual Burden Hours:* 510.

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW, Washington, DC 20201. Attention Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov).

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: [OIRA\\_SUBMISSION@OMB.EOP.GOV](mailto:OIRA_SUBMISSION@OMB.EOP.GOV), Attn: Desk Officer for the Administration for Children and Families.

**Mary B. Jones,**  
*ACF/OPRE Certifying Officer.*  
 [FR Doc. 2019-09413 Filed 5-7-19; 8:45 am]  
**BILLING CODE 4184-34-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2018-N-2973]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Obtaining Information for Evaluating Nominated Bulk Drug Substances for Use in Compounding Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act**

**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 June 7, 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](mailto:oira_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-NEW and title “Obtaining Information for Evaluating Nominated Bulk Drug Substances for Use in Compounding Drug Products Under Section 503B of the Federal Food, Drug, and Cosmetic Act.” 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](mailto: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.

**Clinical Use of Bulk Drug Substances Nominated for Use in Compounding by Outsourcing Facilities OMB Control Number 0910-NEW**

This information collection supports Agency-sponsored research. Section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b) requires FDA to develop a list of bulk drug substances that may be used in compounding under that section (503B bulks list). Section 503B defines compounding to include the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug. Compounded drugs are not FDA-approved. If the conditions under section 503B are met, drug products compounded by entities known as outsourcing facilities are exempt from the following requirements of the FD&C Act: requirements for FDA approval of

drugs in section 505 of the FD&C Act (21 U.S.C. 355), labeling with adequate directions for use under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)), and drug supply chain security requirements under section 582 (21 U.S.C. 360eee-1). One of the conditions that must be met for a drug product compounded by an outsourcing facility to qualify for these exemptions is that the outsourcing facility may not compound a drug using a bulk drug substance unless (1) the bulk drug substance appears on a list established by the Secretary identifying bulk drug substances for which there is a clinical need (“bulks list”); or (2) the substance appears on the drug shortage list in effect under section 506E of the FD&C Act (21 U.S.C. 356e) at the time of compounding, distribution, and dispensing.

Many bulk drug substances have been nominated by the public for use in compounding by outsourcing facilities with adequate supporting information for FDA to evaluate them. The substances were nominated to treat a variety of conditions. To inform our evaluation of bulk drug substances for inclusion on the 503B bulks list, we have entered into a research study with the University of Maryland (UMD) Center of Excellence in Regulatory Science and Innovation (CERSI) and the Johns Hopkins University (JHU) CERSI.

FDA intends to use a two-part analysis in evaluating substances nominated for placement on the 503B bulks list to determine whether there is a clinical need. The collaboration with CERSI-UMD and CERSI-JHU pertains to part 2 of the analysis, which applies to bulk drug substances that are not components of FDA-approved drug products, as well as certain bulk drug substances that are components of FDA-approved drug products that have gone through part 1 and warrant further evaluation under part 2 of the analysis. One of the factors that FDA considers under part 2 is “current and historical use of the substance in compounded drug products, including information about the medical condition(s) that the substance has been used to treat and any references in peer-reviewed medical literature.”

Researchers may use surveys, interviews, focus groups, and other

information collect tools, as appropriate, to obtain information concerning the use of compounded product(s) from medical experts, outsourcing facilities, and other stakeholders. Within this context, the following questions may be posed:

1. What are the health condition(s) that the compounded drug is currently and has been historically used to treat? What is the patient population for which the compound drug has been used to treat?
2. What are the characteristics of the compounded drug(s) using the bulk drug substance (e.g., dosage form, strength, route of administration)?
3. Is the compounded drug considered standard therapy by healthcare practitioners, or is it recommended in clinical practice guidelines? If so, under what circumstances?
4. Does an approved drug exist for the health condition that the compounded

drug product is used to treat? If so, what are the circumstances under which a compounded drug product using the bulk drug substance would be used in lieu of the approved drug product?

5. What is the historical use of the compounded drug to treat the health conditions identified, including the number of years during which the compounded drug has been prescribed for each use, and any change regarding its use over time?
6. To what extent do practitioners prescribe the compounded drug to treat each health condition identified? How many such prescriptions and/or orders have been written in the past 5 years? Have there been any notable changes in the number of prescriptions and/or orders written over this time?
7. How widespread is the use of the compounded drug product, including use in other countries?

8. Do practitioners order the compounded drug to maintain on hand before a patient presents with a need for the drug (“office stock”), or do practitioners typically write prescriptions for a patient after the patient presents with a need for the compounded drug? If the former, why (e.g., emergency situations, convenience)?

In the **Federal Register** of September 17, 2018 (83 FR 46957), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received, and FDA determined that this comment was applicable to a different docket published in the **Federal Register**, and not relevant to this proposed collection of mation.

We estimate the burden of the collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
UMD—CERSI Expert Focus Groups and Interviews .....	150	10	1,500	2	3,000
UMD—CERSI Expert Questionnaire .....	750	10	7,500	* 0.5	3,750
JHU—CERSI Parent Questionnaire .....	1,000	1	1,000	* 0.5	500
Total .....	7,250				

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this information collection.  
\* 30 minutes.

We base our estimate of the average burden per response on review activities familiar to the Agency. Since issuing the 60-day notice, FDA determined an additional burden estimate related to completion of questionnaires. We welcome additional comments regarding this estimate.

Dated: May 3, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019-09414 Filed 5-7-19; 8:45 am]

BILLING CODE 4164-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2015-N-3815]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Electronic Submission of Medical Device Registration and Listing**

**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 June 7, 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 [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). All comments should be identified with the OMB control number 0910-0625. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601

Landsdown St., North Bethesda, MD 20852, 301-796-8867, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@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.

**Electronic Submission of Medical Device Registration and Listing—21 CFR Part 807, Subparts A Through D OMB Control Number 0910-0625—Extension**

Under section 510 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360) and part 807, subparts A through D (21 CFR part 807, subparts A through D), medical device establishment owners and operators are required to electronically submit establishment registration and device listing information.

Complete and accurate registration and listing information is necessary to accomplish a number of statutory and regulatory objectives, such as: (1) Identification of establishments producing marketed medical devices, (2) identification of establishments

producing a specific device when that device is in short supply or is needed for national emergency, (3) facilitation of recalls for devices marketed by owners and operators of device establishments, (4) identification and cataloguing of marketed devices, (5) administering postmarketing surveillance programs for devices, (6) identification of devices marketed in violation of the law, (7) identification and control of devices imported into the country from foreign establishments, (8) and scheduling and planning inspections of registered establishments under section 704 of the FD&C Act (21 U.S.C. 374).

Respondents to this information collection are owners or operators of establishments that engage in the manufacturing, preparation, propagation, compounding, or processing of a device or devices, who must register their establishments and submit listing information for each of their devices in commercial distribution. Notwithstanding certain exceptions, foreign device establishments that manufacture, prepare, propagate, compound, or process a device that is imported or offered for import into the United States must also comply with the registration and listing requirements. The number of

respondents is based on data from the FDA Unified Registration and Listing System.

Burden estimates are based on recent experience with the existing medical device registration and listing program, electronic system operating experience, and previous data estimates.

In the **Federal Register** of December 4, 2018 (83 FR 62583), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR section	FDA form No.	Number of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
807.20(a)(5) <sup>2</sup> —Submittal of Manufacturer Information by Initial Importers ....	3673	5,736	1	5,736	1.75	10,038
807.20(a)(5) <sup>3</sup> —Submittal of Manufacturer Information by Initial Importers ....	3673	5,736	1	5,736	0.1	574
807.21(a) <sup>2</sup> —Creation of Electronic System Account .....	3673	2,937	1	2,937	0.5	1,469
807.21(b) <sup>3</sup> —Annual Request for Waiver from Electronic Registration and Listing .....		1	1	1	1	1
807.21(b) <sup>2</sup> —Initial Request for Waiver from Electronic Registration and Listing for .....		1	1	1	1	1
807.22(a) <sup>2</sup> —Initial Registration and Listing .....	3673	3,467	1	3,467	1	3,467
807.22(b)(1) <sup>3</sup> —Annual Registration .....	3673	23,403	1	23,403	0.5	11,702
807.22(b)(2) <sup>3</sup> —Other Updates of Registration .....	3673	2,687	1	2,687	0.5	1,344
807.22(b)(3) <sup>3</sup> —Annual Update of Listing Information .....	3673	22,607	1	22,607	0.5	11,304
807.26(e) <sup>3</sup> —Labeling and Advertisement Submitted at FDA Request .....		71	1	71	1	71
807.34(a) <sup>2</sup> —Initial Registration and Listing when Electronic Filing Waiver Granted .....		1	1	1	1	1
807.34(a) <sup>3</sup> —Annual Registration and Listing when Electronic Filing Waiver Granted .....		1	1	1	1	1
807.40(b)(2) <sup>3</sup> —Annual Update of US Agent Information .....	3673	1,615	1	1,615	0.5	808
807.40(b)(3) <sup>3</sup> —US Agent Responses to FDA Requests for Information .....	3673	1,535	1	1,535	0.25	384
807.41(a) <sup>3</sup> —Identification of Initial Importers by Foreign Establishments .....	3673	12,983	1	12,983	0.5	6,492
807.41(b) <sup>3</sup> —Identification of Other Parties that Facilitate Import by Foreign Establishments .....	3673	12,983	1	12,983	0.5	6,492
Total One Time Burden .....						14,975
Total Recurring Burden .....						39,173

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> Totals are rounded to the nearest whole number.

<sup>3</sup> One-Time Burden—Firm only provides initially.

<sup>4</sup> Recurring Burden—Firm is required to review annually.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN<sup>1</sup>

21 CFR Section	Number of respondents	Annual frequency per recordkeeper	Total annual records	Hours per record	Total hours
807.25(d) <sup>2</sup> —List of Officers, Directors, and Partners	22,338	1	22,338	0.25 (15 minutes) ....	5,585
807.26 <sup>2</sup> —Labeling and Advertisements Available for Review.	17,032	4	68,128	0.5 (30 minutes) .....	34,064
Total .....	.....	.....	.....	.....	39,649

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> Recurring burden—Firm is required to keep records.

The following adjustments and program changes resulted in a 5,672-hour decrease to the overall total hour burden estimate for this information collection request.

- We adjusted the number of respondents based on updated registration and listing data.
- In the reporting burden table, we corrected the table footnotes to accurately indicate whether the information collection (IC) is a one-time or recurring burden.
- We also adjusted some of the IC descriptions in the table for increased clarity.
- We updated our estimate of Hours per Response for “807.22(a) Initial Registration and Listing” (+ 0.5 hours), “807.22(b)(1) Annual Registration” (– 0.25 hours), and “807.22(b)(3) Annual Update of Listing Information” (– 0.25 hours). Based on our review of the program, we believe these changes to the burden estimate will more accurately reflect the current preparation time for these ICs.

Dated: May 2, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–09412 Filed 5–7–19; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2017–D–7011]

**Laser Products—Conformance With IEC 60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1 (Laser Notice No. 56); Guidance for Industry and Food and Drug Administration Staff; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Laser Products—Conformance with IEC

60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1 (Laser Notice No. 56).” This guidance describes the Agency’s approach regarding compliance with FDA’s performance standards for laser products. FDA believes that under the circumstances described in this guidance, conformance with certain International Electrotechnical Commission (IEC) standards would provide adequate protection of the public health and safety for laser products similar to performance standards in FDA’s regulations. Accordingly, for laser product manufacturers that comply with the comparable clauses in IEC standards specified in the guidance, FDA does not intend to enforce the specified laser performance standards in FDA’s regulations.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 8, 2019.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2017–D–7011 for “Laser Products—Conformance with IEC 60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1 (Laser Notice No. 56).” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit

both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled “Laser Products—Conformance with IEC 60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1 (Laser Notice No. 56)” to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Patrick Hintz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4228, Silver Spring, MD 20993–0002, 301–796–6927.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA recognizes that the IEC is a global organization that prepares and publishes international standards for electrical, electronic, and related technologies, including laser products. This means that manufacturers distributing products in the United States and other countries might have to ensure conformance of their products with IEC standards as well as comply with FDA regulatory requirements. Complying with FDA regulations and conforming to the identified IEC standards may cause manufacturers to duplicate their efforts.

FDA acknowledges the advantages of a universal set of device-specific criteria and requirements. Moreover, FDA believes that under the circumstances described in this guidance, conformance with certain IEC standards would provide adequate protection of the public health and safety for laser products similar to FDA’s performance standards in §§ 1040.10 and 1040.11 (21 CFR 1040.10 and 1040.11). FDA eventually intends to amend its standards for laser products at §§ 1040.10 and 1040.11 to harmonize many of its requirements with those of the IEC because FDA acknowledges the advantages of one set of criteria and requirements worldwide. Until these requirements are harmonized, for laser product manufacturers that comply with the comparable clauses in IEC 60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1, FDA does not intend to enforce the comparable requirements in §§ 1040.10 and 1040.11.

On June 24, 2007, FDA’s Center for Devices and Radiological Health (CDRH) published a guidance entitled “Laser Products—Conformance with IEC 60825–1 and IEC 60601–2–22; Guidance for Industry and FDA Staff (Laser Notice No. 50)” (<https://www.fda.gov/medical-devices/guidance-documents-medical-devices-and-radiation-emitting-products/laser-products-conformance-iec-60825-1-and-iec-60601-2-22-laser-notice-no-50>). Laser Notice No. 56 will not replace the recommendations provided in that 2007 guidance, and manufacturers can follow either Laser Notice No. 50 or 56.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of January 19, 2018 (83 FR 2789). FDA revised the guidance as appropriate in response to the comments.

**II. Significance of Guidance**

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Laser Products—Conformance with IEC 60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1 (Laser Notice No. 56).” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

**III. Electronic Access**

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. This guidance document is also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of “Laser Products—Conformance with IEC 60825–1 Ed. 3 and IEC 60601–2–22 Ed. 3.1 (Laser Notice No. 56)” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1500024 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR parts	Topic	OMB control No.
1002, 1010, 1040 ...	Reporting and Recordkeeping for Electronic Products—General Requirements .....	0910–0025

Dated: May 2, 2019.  
**Lowell J. Schiller**,  
*Principal Associate Commissioner for Policy.*  
 [FR Doc. 2019-09381 Filed 5-7-19; 8:45 am]  
**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2018-N-3353]

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Antimicrobial Animal Drug Distribution Reports and Recordkeeping**

**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 June 7, 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 0910-0659. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** JennaLynn 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.

**Antimicrobial Animal Drug Distribution Reports and Recordkeeping—21 CFR 514.87**

*OMB Control Number 0910-0659—Extension*

Sponsors of approved or conditionally approved applications for new animal drugs containing an antimicrobial active ingredient are required by section 512 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b) to submit to FDA an annual report on the amount of each such ingredient in the drug that is sold or distributed for use in food-producing animals. Sponsors are also required to maintain distribution records for their animal drug products, including separate information for each month of the calendar year, under section 512(l)(3) of the FD&C Act. These provisions were enacted to assist FDA in our continuing analysis of the interactions (including drug resistance), efficacy, and safety of antimicrobials approved for use in both humans and food-producing animals for the purpose of mitigating the public health risk associated with antimicrobial resistance.

Section 514.87 of our regulations (21 CFR 514.87) codifies the reporting requirements established in the FD&C Act. Sponsors submit antimicrobial animal drug sales and distribution reports to the Agency on Form FDA

3744. Each report must specify: (1) The amount of each antimicrobial active ingredient by container size, strength, and dosage form; (2) quantities distributed domestically and quantities exported; and (3) a listing of the target animals, indications, and production classes that are specified on the approved label of the product. The report must cover the period of the preceding calendar year and include separate information for each month of the calendar year. Each report must also provide a species-specific estimate of the percentage of each product that was sold or distributed domestically in the reporting year for use in cattle, swine, chickens, or turkeys for such species that appear on the approved label.

Collection of information on the amount of animal antimicrobials being distributed, including species-specific information, is necessary to support our ongoing efforts to encourage the judicious use of antimicrobials in food-producing animals to help ensure the continued availability of safe and effective antimicrobials for animals and humans. We intend to use these data to supplement existing information, including data collected under the National Animal Health Monitoring System and the National Antimicrobial Resistance Monitoring System programs. Data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture.

In the **Federal Register** of October 1, 2018 (83 FR 49395), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

21 CFR section	FDA form	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
514.87(a) through (e)—Annual Reports for Sponsors With Active Applications—Paper Submission .....	3744	10	7.5	75	62	4,650
514.87(a) through (e)—Annual Reports for Sponsors With Active Applications—Electronic Submission .....	3744	10	7.5	75	52	3,900
514.87(a) through (e)—Annual Reports for Sponsors With Inactive Applications—Paper Submission .....	3744	4	26.5	106	2	212
514.87(a) through (e)—Annual Reports for Sponsors With Inactive Applications—Electronic Submission .....	3744	3	35	105	2	210
Total .....						8,972

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the average burden per response on our recent experience with the existing antimicrobial animal drug distribution reports program. We base our estimate of the number of affected respondents reported in tables 1 and 2 and the average number of responses per respondent in table 1 on a review of our records of sponsors with active and inactive applications. We estimate that 20 sponsors will have active applications, and we assume that half of

the respondents will report electronically, while the other half will report on paper. We estimate that 10 sponsors with active applications will spend 62 hours annually to assemble the necessary information, prepare, and submit an annual antimicrobial animal drug sales and distribution report on paper, and 10 sponsors with active applications will spend 52 hours annually to assemble the necessary information, prepare, and electronically submit an annual antimicrobial animal

drug sales and distribution report. We estimate that seven sponsors will have inactive applications, and we assume that half of these respondents will report electronically, while the other half will report on paper. We estimate that sponsors with inactive applications will spend 2 hours to prepare their annual antimicrobial animal drug sales and distribution reports, whether electronically or on paper.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN <sup>1</sup>

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Recordkeeping required by section 512(l)(3) of the FD&C Act .....	27	1	27	2	54

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

Animal drug manufacturers are already required to maintain distribution records for their animal drug products to comply with FDA’s current good manufacturing regulations for periodic drug reports under § 514.80(b)(4)(i) (21 CFR 514.80(b)(4)(i)), approved under OMB control number 0910–0284. Section 512(l)(3) of the FD&C Act differs from § 514.80(b)(4)(i) in that it requires that records include separate information for each month of the calendar year. In addition, under 21 CFR 211.196 (approved under OMB control number 0910–0139), manufacturers currently are required to maintain distribution records that include dosage form and the date the drug is distributed. Based on these requirements, FDA believes that manufacturers already keep detailed records of the dates when antimicrobial drugs are distributed for marketing and recall purposes from which monthly reports can be prepared as part of usual and customary business practices. However, FDA estimates an additional recordkeeping burden of 54 hours for further compliance with section 512(l)(3) of the FD&C Act, as detailed in table 2.

Based on a review of the information collection since our last request for OMB approval, which was submitted with a final rule, we have made no adjustments to our burden estimates as reported in tables 1 and 2, other than to remove the one-time burden of 787 hours, which represented the time needed to review the provisions of the final rule and develop a compliance plan in the first year of compliance.

Dated: May 2, 2019.  
**Lowell J. Schiller**,  
*Principal Associate Commissioner for Policy.*  
 [FR Doc. 2019–09425 Filed 5–7–19; 8:45 am]  
**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2014–D–2245]

**Classification and Requirements for Laser Illuminated Projectors (Laser Notice No. 57); Guidance for Industry and Food and Drug Administration Staff; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57).” This guidance describes FDA’s policy with respect to certain LIPs that comply with International Electrotechnical Commission (IEC) standards during laser product classification under the Electronic Product Radiation Control provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act) that apply to electronic products.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 8, 2019.

**ADDRESSES:** You may submit either electronic or written comments on

Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2014–D–2245 for “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57); Guidance for Industry and Food and Drug Administration Staff.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57)” to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Patrick Hintz, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4228, Silver Spring, MD 20993–0002, 301–796–6927.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This guidance describes FDA’s policy with respect to certain LIPs that comply with IEC standards during laser product classification under the Electronic Product Radiation Control provisions of the FD&C Act (Pub. L. 90–602, amended by Pub. L. 103–80) that apply to electronic products. For purposes of this guidance, the term “laser illuminated projector” refers to a type of demonstration laser product regulated under 21 CFR 1040.10(b)(13) that is designed to project a display image without the use of raster-scanned collimated laser beams. LIPs may be used in locations such as indoor or outdoor cinema theaters, laser shows, presentations at conventions, image/data projectors in office settings, or homes. Under 21 CFR 1040.10(c), FDA recognizes four major hazard classes (I to IV) of lasers, including three subclasses (IIa, IIIa, and IIIb). Under this classification procedure higher laser classes correspond to more powerful lasers and a higher potential to pose serious danger if used improperly.

As demonstration laser products, LIPs and applications for LIPs cannot exceed class IIIa emission limits as specified in 21 CFR 1040.11(c) (which is comparable to IEC 60825–1 Ed. 3.0 Class 3R) unless granted a variance by FDA under 21 CFR 1010.4. Some LIPs and applications for LIPs will exceed the class IIIa limits and therefore require a variance to exceed those emission limits.

This guidance document describes FDA’s intent to clarify the application of certain aspects of the performance standard requirements in 21 CFR

1040.11(c) for LIPs. Because the radiant emission levels produced by LIPs can be scientifically characterized by an alternative IEC standard, IEC 62471–5:Ed. 1.0, FDA does not intend to enforce the requirements under 21 CFR 1040.10(c)(1) and 21 CFR 1040.11(c) when LIP manufacturers conform to these standards under the situations outlined in sections III and IV of this guidance.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of October 2, 2017 (82 FR 45861). FDA revised the guidance as appropriate in response to the comments. This guidance supersedes “Immediately in Effect Guidance Document: Classification and Requirements for Laser Illuminated Projectors (LIPs); Guidance for Industry and Food and Drug Administration Staff,” issued February 18, 2015.

##### II. Significance of Guidance

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on classification and requirements for LIPs (Laser Notice No. 57). It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

##### III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. This guidance document is also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of “Classification and Requirements for Laser Illuminated Projectors (LIPs) (Laser Notice No. 57)” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1400056 to identify the guidance you are requesting.

##### IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections

of information in the following FDA regulations and forms have been

approved by OMB as listed in the following table:

21 CFR part and form	Topic	OMB control No.
1002, 1010, 1040, and form FDA 3632 ...	Reporting and Recordkeeping for Electronic Products—General Requirements .....	0910–0025

Dated: May 2, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–09380 Filed 5–7–19; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2016–D–2049]

#### Medical X-Ray Imaging Devices Conformance With International Electrotechnical Commission Standards; Guidance for Industry and Food and Drug Administration Staff; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled “Medical X-Ray Imaging Devices Conformance with IEC Standards.” This guidance describes FDA’s policy regarding the regulation of medical x-ray imaging equipment that is subject to the Federal Food, Drug and Cosmetic Act (FD&C Act) and FDA’s regulations that apply to medical devices and electronic products.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 8, 2019.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted,

such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

*Instructions:* All submissions received must include the Docket No. FDA–2016–D–2049 for “Medical X-Ray Imaging Devices Conformance with IEC Standards.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information

redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled “Medical X-Ray Imaging Devices Conformance with IEC Standards” to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Robert Sauer, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5628, Silver Spring, MD 20993–0002, 301–796–3580.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This guidance describes FDA’s policy regarding the regulation of medical x-ray imaging equipment that is subject to the FD&C Act and FDA’s regulations that apply to medical devices and electronic products. In this guidance, FDA is seeking to harmonize performance standards prescribed pursuant to section 534 of Subchapter C (Electronic Product Radiation Control (EPRC)) of the FD&C Act (21 U.S.C. 360(kk)) with International Electrotechnical Commission (IEC) standards, where appropriate, to help to ensure streamlined regulatory review of submissions for these products. The guidance also provides recommendations to industry on how to comply with the applicable requirements. FDA has determined that industry conformance to certain IEC standards would provide, at a minimum, the same level of protection of the public health and safety from electronic radiation as certain EPRC regulatory standards. In addition, due to the recent publication of a proposed rule (84 FR 12147) on April 1, 2019, that would, if finalized, eliminate the reporting requirements for x-ray imaging devices, FDA determined that the proposed policy outlined in section 4 of the draft guidance, which stated that x-ray imaging devices that conform to IEC standards would be considered to have met the EPRC reporting requirements, should be removed from the guidance. This decision was made to avoid the confusion inherent in establishing an

interim procedure that would shortly be superseded by the final rule. However, as stated in section V. of the guidance, FDA believes that submission of a declaration of conformity to the appropriate standards, and model identification as required by 21 CFR 1002.10(a) and (b), in a product report, would be sufficient to meet the requirements of a product report under 21 CFR 1002.10, thus reducing duplication.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of August 3, 2016 (81 FR 51201). FDA revised the guidance as appropriate in response to the comments.

**II. Significance of Guidance**

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Medical X-Ray Imaging Devices Conformance with IEC Standards.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

**III. Electronic Access**

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological

Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. Persons unable to download an electronic copy of “Medical X-Ray Imaging Devices Conformance with IEC Standards” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1400014 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

In the **Federal Register** of August 3, 2016 (81 FR 51201), we requested comments on the revision of OMB control number 0910–0025, “Reporting and Recordkeeping for Electronic Products—General Requirements,” to adjust the annual reporting burden consistent with the policy in the draft guidance pertaining to reports. However, because this final guidance does not include this policy pertaining to reports (see the Background section), we have determined that the guidance no longer necessitates revisions to OMB control number 0910–0025.

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
807, subpart E .....	Premarket Notification .....	0910–0120
800, 801, and 809 .....	Medical Device Labeling Regulations .....	0910–0485
820 .....	Current Good Manufacturing Practice (CGMP); Quality System (QS) Regulation .....	0910–0073
1002 through 1050 .....	Reporting and Recordkeeping for Electronic Products—General Requirements .....	0910–0025

Dated: May 2, 2019.  
**Lowell J. Schiller,**  
*Principal Associate Commissioner for Policy.*  
 [FR Doc. 2019–09405 Filed 5–7–19; 8:45 am]  
**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2014–D–1344]

**Policy Clarification for Certain Fluoroscopic Equipment Requirements; Guidance for Industry and Food and Drug Administration Staff; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final

guidance entitled “Policy Clarification for Certain Fluoroscopic Equipment Requirements.” This guidance document intends to clarify FDA’s interpretation of certain aspects of the performance standard requirements in FDA’s regulations for fluoroscopic equipment.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 8, 2019.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.
  - If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket No. FDA-2014-D-1344 for "Policy Clarification for Certain Fluoroscopic Equipment Requirements." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

"THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Policy Clarification for Certain Fluoroscopic Equipment Requirements" to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

**FOR FURTHER INFORMATION CONTACT:** Donald Miller, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4318, Silver Spring, MD 20993-0002, 301-796-3299.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This guidance document intends to clarify FDA's interpretation of certain aspects of the performance standard requirements in §§ 1020.30 and 1020.32 (21 CFR 1020.30 and 1020.32) for fluoroscopic equipment. Specifically, it clarifies FDA's interpretation of fluoroscopic irradiation time (§ 1020.30(b)), the permissible duration of the activation of the x-ray tube in the fluoroscopic mode (§ 1020.32(c)), and on inclusion of an emergency fluoroscopy mode in fluoroscopes.

FDA considered comments received on the draft guidance that appeared in the **Federal Register** of September 25, 2014 (79 FR 57559). FDA revised the guidance as appropriate in response to the comments.

### II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on "Policy Clarification for Certain Fluoroscopic Equipment Requirements." It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

### III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm>. This guidance document is also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of "Policy Clarification for Certain Fluoroscopic Equipment Requirements" may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document 1806 to identify the guidance you are requesting.

### IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in the following FDA regulations have been approved by OMB as listed in the following table:

21 CFR part	Topic	OMB control No.
807, subpart E ..... 1020 .....	Premarket Notification ..... Reporting and Recordkeeping for Electronic Products—General Requirements .....	0910–0120 0910–0025

Dated: May 2, 2019.  
**Lowell J. Schiller,**  
*Principal Associate Commissioner for Policy.*  
 [FR Doc. 2019–09406 Filed 5–7–19; 8:45 am]  
**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**  
**[Docket No. FDA–2018–N–3138]**

**Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Experimental Study of an Accelerated Approval Disclosure**

**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 (PRA).

**DATES:** Fax written comments on the collection of information by June 7, 2019.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira\_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–NEW and title “Experimental Study of an Accelerated Approval Disclosure.” Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrahi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRASStaff@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed

collection of information to OMB for review and clearance.

**Experimental Study of an Accelerated Approval Disclosure**

*OMB Control Number 0910–NEW*

**I. Background**

Section 1701(a)(4) of the Public Health Service Act (PHS Act) (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

The mission of the Office of Prescription Drug Promotion (OPDP) is to protect the public health by helping to ensure that prescription drug information is truthful, balanced, and accurately communicated so that patients and healthcare providers can make informed decisions about treatment options. The OPDP’s research program supports this mission by providing scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health. Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that we believe are most central to our mission, focusing in particular on three main topic areas: advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits; focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience; and our focus on research quality aims at maximizing the quality of research data through analytical methodology development and investigation of sampling and response issues. This study falls under the topic of advertising features (content and format).

Pursuant to section 506(c) of the FD&C Act (21 U.S.C. 356(c)) and 21 CFR part 314, subpart H (or 21 CFR part 601, subpart E for biological products), FDA

may grant accelerated approval to a drug product under section 505(c) of the FD&C Act (21 U.S.C. 355(c)) or a biological product under section 351(a) of the PHS Act (42 U.S.C. 262(a)). This pathway enables faster approval of prescription drugs intended to treat serious or life-threatening illnesses. Accelerated approval may be based on a determination that a drug product has an effect on a surrogate endpoint (for example, a blood test result) that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit (*i.e.*, an intermediate clinical endpoint). In approving a drug under the accelerated approval pathway, the severity, rarity, or prevalence of a condition, and the availability or lack of alternative treatments, are taken into account.

The accelerated approval pathway is limited to certain products intended to treat serious or life-threatening illnesses as there can be “[u]ncertainty about whether clinical benefit will be verified and the possibility of undiscovered risks” (FDA 2014 guidance for industry entitled “Expedited Programs for Serious Conditions—Drugs and Biologics,” available at <https://www.fda.gov/files/drugs/published/Expedited-Programs-for-Serious-Conditions-Drugs-and-Biologics.pdf>). Sponsors are generally required to conduct post approval studies to verify and describe the predicted clinical benefit, but those confirmatory studies are not complete at the time that the accelerated approval is granted (Ref. 1). In the event that the required post approval confirmatory studies fail to verify and describe the predicted effect or clinical benefit, a drug’s approval can be withdrawn using expedited procedures.

Under FDA’s regulations governing physician labeling for prescription drugs, the INDICATIONS AND USAGE section of the FDA-approved prescribing information (PI) for a drug approved under accelerated approval must include a succinct description of the limitations of usefulness of the drug and any uncertainty about anticipated clinical benefits, with reference to the clinical studies section for a discussion of the available evidence (21 CFR

201.57(c)(2)(i)(B)). Therefore, the PI for accelerated approval products typically satisfies this requirement by including a statement in the INDICATIONS AND USAGE section about the product’s approval under the accelerated approval pathway. In a guidance, FDA recommended that the INDICATIONS AND USAGE section for drugs approved under accelerated approval should generally describe three elements: indication(s), limitations of usefulness and clinical benefit uncertainty, and continued approval (“Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Pathway” (January 2019). Available at: <https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM390058.pdf>). As the PI is intended for healthcare professionals, the information related to a drug’s accelerated approval generally includes complex concepts and sophisticated wording. For example, PIs for accelerated approval products include language such as:

- This indication is approved under accelerated approval based on [surrogate endpoint]. An improvement in survival or disease-related symptoms has not been established. Continued approval for this indication may be contingent upon verification and description of clinical benefit in the confirmatory trial; or
- Approval is based on a reduction in [surrogate endpoint]. There are no controlled trials demonstrating a direct treatment benefit such as improvement in disease-related symptoms, functioning, or increased survival.

Despite its complexity, sponsors often use this language from the PI in direct-to-consumer (DTC) promotional materials for drugs approved under

accelerated approval. In other cases, DTC promotion of accelerated approval products does not communicate the unique considerations and potential limitations inherent in the accelerated approval process.

Disclosures may be used to communicate information such as this to consumers. Disclosures can include information about scientific and clinical data, any residual uncertainty about clinical benefit, and the practical utility of scientific and clinical data. These disclosures may influence consumer comprehension and affect perception of drug risks and benefits. This study will examine the presence, wording, and prominence of a disclosure communicating information related to the drug’s accelerated approval in DTC promotional materials. This information includes the use of surrogate or intermediate clinical endpoints to support approval, the uncertainty about the relationship of the surrogate or intermediate clinical endpoint to the predicted clinical benefit, and the need for confirmatory trials.

We plan to conduct one pretest not longer than 20 minutes, administered via internet panel, to test the experimental manipulations and pilot the main study procedures. After implementing any lessons learned from the pilot, we plan to conduct one main study not longer than 20 minutes, administered via internet panel. For the pretest and main study, we will randomly assign the participants to one of the test conditions (see table 1 for the study design). We have chosen to focus on oncology products because cancer is a life-threatening illness, and many oncology products are granted accelerated approval. Moreover, DTC promotion of oncology drugs is common. In the study, participants will view a website for a fictional oncology

prescription drug. After viewing the website, participants will complete a questionnaire that assesses whether participants noticed the disclosure and their interpretation of it, as well as perceptions of the drug’s risks and benefits. We will also measure covariates such as demographics and literacy. The questionnaire is available upon request from [DTCresearch@fda.hhs.gov](mailto:DTCresearch@fda.hhs.gov).

We will vary the presence and prominence of the disclosure (e.g., size, color, and location). We hypothesize that participants will be more likely to notice the disclosure when it is presented more, rather than less, prominently. In turn, we expect that participants’ perceptions of the drug are more likely to be affected by the disclosure in the high prominence condition. We also will vary whether the disclosure is written in consumer-friendly language or uses language, in use by many sponsors, which is the same as or similar to that directed at healthcare professionals in FDA-approved prescription drug labeling for accelerated approval products. The consumer-friendly version of the accelerated approval disclosure will be based on consumer feedback elicited in focus groups conducted prior to the pretest (approved under OMB control number 0910–0695). The physician labeling version of the accelerated approval disclosure will be drawn from FDA-approved physician labeling. We hypothesize that participants will be more likely to notice and understand the disclosure and use it to form their perceptions of the drug if they view the consumer-friendly language. To test these hypotheses, we will conduct inferential statistical tests such as logistic regression and analysis of variance.

TABLE 1—STUDY DESIGN

	High prominence	Low prominence	Absent
Physician Labeling version .....			
Consumer-friendly version .....			

We will recruit a general population sample of adult volunteers 18 years of age or older. We will exclude individuals who work for the U.S. Department of Health and Human Services or work in the healthcare, marketing, advertising, or pharmaceutical industries. We will use health literacy quotas to ensure that our sample includes participants with a range of health literacy skills. With the

sample sizes described below, we will have sufficient power to detect small-sized effects in the main study (table 2).

In the **Federal Register** of October 17, 2018 (83 FR 52478), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received four submissions that were PRA-related. Within those submissions, FDA

received multiple comments, which the Agency has addressed below.

(Comment 1) One comment suggested that the study does not evaluate the extent to which patients understand accelerated approval, “including the serious and life-threatening nature of the disease, the fact that FDA determined that the product is likely to provide a meaningful advantage over available therapy, the fact that the

product likely addresses a significant unmet medical need, and that the accelerated approval has yet to be confirmed with additional data.” The comment suggests updating Q12, Q13, and Q18 to reflect this context.

(Response) We will begin the study by giving participants information about acute lymphoblastic leukemia, which includes its serious and life-threatening nature, to put the accelerated approval of the drug product in the appropriate context. Questions 3–9 assess participants’ understanding of the accelerated approval concepts conveyed in the disclosure. The concepts in the disclosure align with the elements recommended by FDA to describe accelerated approval products and information currently seen in DTC promotion (Ref. 2). Questions 12, 13, and 18 are designed to measure participants’ perceptions of the drug’s risks.

(Comment 2) One comment suggested that the proposed disclosure language, “we currently do not know if Drug X helps people live longer or feel better” should be replaced with “we currently do not know if Drug X helps to minimize progression of disease and improve quality of life.” The comment noted that the proposed language may be simplistic and inaccurate because “feel better” is subjective and may be irrelevant for cancer treatments.

(Response) In many cases, the available data for accelerated approval products do provide information about disease progression, without providing information on overall survival (*i.e.*, living longer). Therefore, we do not believe that replacing “live longer” with “minimizing progression of disease” makes the disclosure more accurate or consumer-friendly. In addition, based on our focus group testing, we believe that “feel better” is a consumer-friendly way to discuss improvements in symptoms or quality of life. We disagree that this is an irrelevant outcome for cancer patients.

(Comment 3) One comment stated that Q26 (Perspective Taking Scale) does not appear necessary.

(Response) We included the Perspective Taking Scale as a potential moderator. Participants will be drawn from the general public, and we will ask them to imagine that someone close to them was recently diagnosed with the relevant medical condition. Participants’ ability to identify with a different perspective might affect how well they are able to do this. We will evaluate the usefulness of this measure in the pretest and drop it from the main study if it does not apply.

(Comment 4) One comment recommended studying another consumer-friendly disclosure in place of the physician labeling version of the disclosure. In addition, this comment recommended that the consumer-friendly disclosure not mention unknown outcomes (*i.e.*, “we currently do not know if Drug X helps people live longer or feel better.”).

(Response) We plan to study the physician labeling version of the disclosure because sponsors currently use this language to explain accelerated approval in DTC promotion (Ref. 2). We plan to include a statement about unknown outcomes in the disclosure because it is one of the elements recommended by FDA to describe accelerated approval products, and it is present in currently used accelerated approval disclosures (Ref. 2). We are in support of additional research that would study alternate consumer-friendly versions.

(Comment 5) One comment requested clarification on the execution of the prominence conditions, in particular regarding its proximity to the indication.

(Response) The disclosure will be presented in direct conjunction with the indication in both prominence conditions. In the high prominence condition, the disclosure will also be presented along with the largest claim.

(Comment 6) Three comments requested access to the study stimuli.

(Response) We have described the purpose of the study, the design, the population of interest, and have provided the questionnaire to numerous individuals upon request. We provided the disclosure language in the questionnaire. Our full stimuli are under development during the PRA process. We do not make draft stimuli public during this time because of concerns that this may contaminate our participant pool and compromise the research.

(Comment 7) One comment requested that we clarify the primary measure of the study.

(Response) Our hypotheses are based on noticing the disclosure (Q20), understanding the disclosure (Q3–Q9), and perceptions (Q10–Q17).

(Comment 8) One comment asked why items Q20 and Q21 come after items Q7–Q19.

(Response) Items Q7–Q19 are designed to measure participants’ reaction to the experimental condition to which they were assigned. Items Q20 and Q21 show the disclosure to all participants (regardless of experimental condition) and ask them to respond to it.

(Comment 9) One comment questioned the utility of Q19–B.

(Response) We agree with this concern and have deleted this item.

(Comment 10) One comment stated a concern that an accelerated approval disclosure could cause undue apprehension and deter people who might otherwise benefit from seeking treatment advice about accelerated approval products. Based on this concern, the comment suggested adding questions about whether participants would seek information regarding potential risks or discuss the accelerated approval status with a healthcare professional.

(Response) The current study is intended to gather data that will help us understand how accelerated approval disclosures may impact consumer perception of an accelerated approval drug product. In a content analysis of accelerated approval product websites, we found that 73 percent currently include some form of a disclosure already (Ref. 2). Therefore, it is important to study what effect these disclosures may have. We will measure participants’ perceptions of the drug’s benefits and risks. In addition, we have expanded our intention question to also measure intentions to suggest a loved one ask their doctor about the drug’s risks, benefits, and FDA approval.

(Comment 11) One comment suggested that promotional materials are not the best venue for providing information about prescription drugs, given the role of healthcare professionals in discussing and prescribing treatments. Based on this, the comment suggested modifying the study to focus on prescriber-patient interactions rather than DTC promotion.

(Response) Consumers often wish to participate in shared decision-making with healthcare professionals when selecting prescription drugs and may request specific prescription drugs from their healthcare professionals based on promotions they have seen in the marketplace. Because information consumers receive through DTC prescription drug promotion can impact these requests, it is important to investigate how the information in prescription drug promotional pieces impacts consumer attention, understanding, and perceptions.

(Comment 12) One comment noted that, in real-world conditions, consumers do not choose an accelerated approval product in a vacuum. This comment requested that we provide participants with information on the limited availability and/or effectiveness of alternative treatments.

(Response) We acknowledge that accelerated approval products often constitute the only treatment option or one of a limited number of treatment options available to patients. We revised the questionnaire to include information for participants in this study about the treatment landscape for the disease.

(Comment 13) One comment recommends enrolling a diversity of participants across demographic categories and geographic locations. They suggest screening for pretest participants, individuals who have recently participated in prescription drug research, and individuals with prior use of oncology products or accelerated approval products.

(Response) Participants will be internet panel members. We will use soft quotas to ensure recruitment of a low health literacy population as well as a demographically diverse set of participants. Pretest participants will not be allowed to participate in the main study. We added questionnaire items asking participants whether they have been diagnosed with cancer, and if so whether they have ever taken prescription drugs, and specifically

accelerated approval products, for cancer.

(Comment 14) One comment noted that participants may pay more attention to information presented in a study, including claims designed to be intentionally misleading, and asked what efforts we will take to avoid response bias.

(Response) The study design does not include intentionally misleading claims. Based on previous research with DTC prescription drug websites, we expect the median time spent on the study stimuli to be under a minute to 2 minutes (Ref. 3). In general, we attempt to minimize response bias by following best practices, such as keeping the survey length short and cognitive-testing and pretesting the questions to make sure they are clearly written.

(Comment 15) One comment requested that the screener and consent form be made available.

(Response) The screener and consent form are available as part of the information collection submission to the OMB.

(Comment 16) One comment noted that the wording of Q4 and Q9 could

lead participants toward a specific response.

(Response) These questions are designed to measure whether participants processed the information in the disclosure. Thus, Q4 asks about the unknown outcome information from the disclosure, and Q9 asks about the continuing research information from the disclosure. Because these are not meant to be questions about perceptions, we have changed the wording of Q4 to clarify that we are asking about what the website said, rather than what they might think. We will evaluate these items in cognitive interview and pretesting.

(Comment 17) One comment recommended adding intermediate response values for Q10–Q17 and Q24–Q26.

(Response) We have added intermediate response values for these items, with the exception of Q26, the Perspective Taking Scale, to be consistent with its previous use.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

Activity	No. of respondents	No. of responses per respondent	Total annual responses	Average burden per response	Total Hours
Pretest screener .....	916	1	1	0.08 (5 minutes) .....	73.28
Study screener .....	1,507	1	1	0.08 (5 minutes) .....	120.56
Pretest .....	385	1	1	0.33 (20 minutes) ...	127.05
Main Study .....	633	1	1	0.33 (20 minutes) ..	208.89
Total .....					529.78

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

**II. References**

The following references are on display with the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; these are not available electronically at <https://www.regulations.gov> as these references are copyright protected. Some may be available at the website address, if listed. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Beaver J.A., L.J. Howie, L. Pelosof, et al., "A 25-Year Experience of U.S. Food and Drug Administration Accelerated Approval of Malignant Hematology and Oncology Drugs and Biologics: A Review." *JAMA Oncology*, 4(6):849–856, 2018. doi:10.1001/jamaoncol.2017.5618.

2. Sullivan H.W., A.C. O'Donoghue, K.T. David, et al., "Disclosing Accelerated Approval on Direct-to-Consumer Prescription Drug websites." *Pharmacoepidemiology and Drug Safety*, 27:1277–1280, 2018. <https://doi.org/10.1002/pds.4664>.

3. Sullivan H.W., A.C. O'Donoghue, D.J. Rupert, et al., "Placement and Format of Risk Information on Direct-to-Consumer Prescription Drug Websites." *Journal of Health Communication*, 22:171–181, 2017.

Dated: May 2, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–09418 Filed 5–7–19; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2017-D-4886]

**Utilizing Animal Studies To Evaluate Organ Preservation Devices; Guidance for Industry and Food and Drug Administration Staff; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance entitled "Utilizing Animal Studies to Evaluate Organ Preservation Devices." The intent of this guidance is to provide recommendations regarding best practices for utilizing animal

studies for the evaluation of organ preservation devices.

**DATES:** The announcement of the guidance is published in the **Federal Register** on May 8, 2019.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA-2017-D-4886 for "Utilizing Animal Studies to Evaluate Organ Preservation Devices." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Utilizing Animal Studies to Evaluate Organ Preservation Devices" to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993-0002. Send one self-addressed adhesive label to assist that office in processing your request.

#### **FOR FURTHER INFORMATION CONTACT:**

Carolyn Neuland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G226, Silver Spring, MD 20993-0002, 301-796-6523.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

FDA is announcing the availability of the leapfrog guidance "Utilizing Animal Studies to Evaluate Organ Preservation Devices." The intent of this guidance is to provide recommendations regarding best practices for utilizing animal studies for the evaluation of organ preservation devices, while considering both regulatory least burdensome principles and ethical principles in animal testing. This guidance provides clarity on premarket recommendations to develop animal transplant models for organ preservation technologies, which will streamline initiation of clinical studies. Optimizing animal and clinical study designs for premarket submissions will allow us to bring novel, safe, and effective organ preservation devices to the market faster to increase the availability of organs for transplant for patients awaiting transplants. FDA recognizes that best practices for conducting animal studies to evaluate organ preservation devices are evolving with the rapid advancements in such technologies. This guidance is not intended to be comprehensive or prescriptive.

This guidance is a leapfrog guidance; leapfrog guidances are intended to serve as a mechanism by which the Agency can share initial thoughts regarding the content of premarket submissions for emerging technologies and new clinical applications that are likely to be of public health importance very early in product development. This leapfrog guidance represents the Agency's initial thinking, and our recommendations may change as more information becomes available. The Agency strongly encourages manufacturers to submit a Pre-Submission to obtain more detailed feedback regarding their organ preservation device. For more information on Pre-Submissions, please see "Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff" at (<https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM311176>).

Early stakeholder feedback was sought to inform the development of this guidance through the Center for Devices and Radiological Health's (CDRH's) notice on the fiscal year 2016 proposed guidance development issued

December 29, 2015 (80 FR 81335). Specific questions were posed to solicit input into the content of the draft guidance and comments were collected through Docket No. FDA-2012-N-1021. FDA also considered comments received on the draft guidance that appeared in the **Federal Register** of September 15, 2017 (82 FR 43390). FDA revised the guidance as appropriate in response to the comments.

**II. Significance of Guidance**

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Utilizing Animal Studies to Evaluate Organ Preservation Devices.” It does not establish any rights for any person and is not binding on

FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

**III. Electronic Access**

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the internet. A search capability for all CDRH guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov>. Persons unable to download an electronic copy of “Utilizing Animal Studies to Evaluate

Organ Preservation Devices” may send an email request to [CDRH-Guidance@fda.hhs.gov](mailto:CDRH-Guidance@fda.hhs.gov) to receive an electronic copy of the document. Please use the document number 1500083 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the following FDA regulations and guidance and the Federal Food, Drug, and Cosmetic Act (FD&C Act) have been approved by OMB as listed in the following table:

21 CFR Part; guidance; or FD&C act section	Topic	OMB Control No.
807, subpart E .....	Premarket notification .....	0910–0120
814, subparts A through E .....	Premarket approval .....	0910–0231
814, subpart H .....	Humanitarian Device Exemption .....	0910–0332
812 .....	Investigational Device Exemption .....	0910–0078
“De Novo Classification Process (Evaluation of Automatic Class III Designation)” ...	De Novo classification process .....	0910–0844
“Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff”.	Q-submissions .....	0910–0756

Dated: May 2, 2019.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2019–09402 Filed 5–7–19; 8:45 am]

**BILLING CODE 4164–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Meeting of the Advisory Council on Blood Stem Cell Transplantation**

**AGENCY:** Health Resources and Services Administration (HRSA), HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Advisory Council on Blood Stem Cell Transplantation (ACBSCT) meeting has been rescheduled due to unforeseen circumstances and will now be held on Tuesday, July 2, 2019, from 10:00 a.m.–4:00 p.m. Eastern Time. The meeting will be held by webinar and conference call. The webinar link, conference call-in number, agenda, and instructions for registration will be posted 15 business days before the meeting on the ACBSCT website at [https://bloodcell.transplant.hrsa.gov/about/advisory\\_council/meetings/index.html](https://bloodcell.transplant.hrsa.gov/about/advisory_council/meetings/index.html).

**FOR FURTHER INFORMATION CONTACT:**

Robert Walsh, Designated Federal Officer, at the Healthcare Systems Bureau, Division of Transplantation, HRSA, 5600 Fishers Lane, 8W60, Rockville, Maryland 20857; 301–443–6839; or [RWalsh@hrsa.gov](mailto:RWalsh@hrsa.gov).

*New meeting date:* Tuesday, July 2, 2019, rather than May 7, 2019, as previously announced.

**Amy P. McNulty,**

*Acting Director, Division of the Executive Secretariat.*

[FR Doc. 2019–09434 Filed 5–7–19; 8:45 am]

**BILLING CODE 4165–15–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Committee on Vital and Health Statistics: Visioning Session**

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee program.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards.

*Date and Times:* Wednesday, July 10, 2019: 9:00 a.m.–5:00 p.m. (EDT), Thursday, July 11, 2019: 8:30 a.m.–5:00 p.m. (EDT).

*Place:* U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW, Rm. 505–A, Washington, DC 20201.

*Status:* Open. There will be a public comment period during the final 15 minutes of the first day of the meeting.

*Purpose:* Health Insurance Portability and Accountability Act (HIPAA) legislation from 1996, as amended,<sup>1</sup> established a regulatory framework to support the exchange of electronic information between covered entities, and directed the Secretary of Health and Human Services (HHS) to publish regulations adopting standards, code sets, and unique identifiers. The administrative simplification provisions of HIPAA pertain to retail pharmacy and medical transactions, such as eligibility, claims, payment, enrollment, and authorizations.

NCVHS advises the HHS Secretary on health data, statistics, privacy, national health information policy, and is mandated to report to Congress on the implementation status of HIPAA. Since mid-2017, the Subcommittee on Standards has been focused on developing a “predictability roadmap” through collaboration with industry to identify and evaluate barriers to the efficient and timely update and

<sup>1</sup> Along with Section 1104 (c) of the Patient Protection and Affordable Care Act (ACA) of 2010.

adoption of standards and operating rules. NCVHS sought to identify and understand the challenges under the current standards development and regulatory processes. Based on feedback the Committee obtained from stakeholders over an eighteen-month period, in February 2019 the Committee delivered five recommendations to the HHS Secretary supporting the industry's need for trusted cadence to improve the updates, adoption and implementation of transaction standards and operating rules to keep pace with innovative business needs and technology changes. The five recommendations represented actionable steps for adopting, implementing, and enforcing the administrative simplification provisions of HIPAA.

One recommendation was specific to certain entities and processes related to the maintenance, modification, and recommendations to the Secretary for updated and new standards or transactions. Regarding this process, NCVHS urged HHS "to re-evaluate the function and purpose of the Designated Standards Maintenance Organizations (DSMO)."

In the HIPAA Transaction and Code Sets final rule of August 2000 (65 FR 50312), the Secretary named the six DSMOs. After the publication of the final rule, the six organizations and the Secretary of HHS signed a Memorandum of Understanding (MOU) establishing a steering committee and formalizing the processes for reviewing updated or new standards in advance of a recommendation to NCVHS and the Secretary.

Between 2001 and 2004, the DSMO steering committee received more than 150 change requests. Today, the DSMO receives fewer than 10 change requests per year. The DSMO appears to have accomplished the purposes for which it was established.

To support future work the HHS Secretary may undertake regarding the NCVHS recommendation to re-evaluate the DSMO, the Subcommittee will conduct a facilitated visioning session with a group of industry stakeholders. The goal of this session is to develop a set of viable options for a next-generation DSMO.

Following the meeting, the Subcommittee plans to draft additional recommendations for the full Committee to consider for submission to the HHS Secretary. These recommendations will take into account the input received during the facilitated visioning session.

The times and topic for this meeting are subject to change. Participation in the visioning session will be by invitation in order to maximize

effectiveness. Members of the public are welcome to submit comments and suggestions through August 20, 2019, to [ncvhs@mail.cdc.gov](mailto:ncvhs@mail.cdc.gov). Please refer to the posted agenda at [www.ncvhs.hhs.gov](http://www.ncvhs.hhs.gov) for updates.

**Contact Persons for More Information:** Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458-4715. To obtain information pertaining to meeting content, contact Geanelle G. Herring, MSW, (410) 786-4466; Centers for Medicare & Medicaid Services, Office of Information Technology, Division of National Standards, 7500 Security Boulevard, Baltimore, Maryland, 21244 and/or Lorraine Doo, MSWA, MPH, (410) 786-6597. Summaries of past meetings and a roster of Committee members are available on the NCVHS website: [www.ncvhs.hhs.gov](http://www.ncvhs.hhs.gov) where further information, including an agenda and instructions to access the live audio broadcast of the meeting, will also be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488-3210 as soon as possible.

Dated: May 2, 2019.

**Sharon Arnold,**

*Associate Deputy Assistant Secretary for Planning and Evaluation, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 2019-09460 Filed 5-7-19; 8:45 am]

**BILLING CODE 4151-05-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Statement of Organization, Functions, and Delegations of Authority: Office of the Assistant Secretary for Financial Resources

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) is updating a portion of one office, the Office of the Assistant Secretary for Financial Resources (ASFR), which is located within the Office of the Secretary (OS). ASFR is modifying its structure to streamline and improve operational functionality by replacing the Office of Grants and Acquisition Policy and Accountability (AMT) and establishing

in its place the Office of Acquisitions (AMV), and the Office of Grants (AMU). **FOR FURTHER INFORMATION CONTACT:** Jen Moughalian, Acting Assistant Secretary for Financial Resources, 200 Independence Ave. SW, Washington, DC 20201, (202) 690-6061. Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) is being amended at Chapter AM, Office of Financial Resources, as last amended at 76 FR 69741-42, dated November 9, 2011, 74 FR 57679-82, dated November 9, 2009, and 74 FR 18238-39, dated April 21, 2009. This reorganization will eliminate the Office of Grants and Acquisition Policy and Accountability (AMT) within the Office of Financial Resources (ASFR) and establish the Office of Grants (AMU) and Office of Acquisitions (AMV). This reorganization will make the following changes under Chapter AM, Office of Financial Resources:

I. Under Section AM.10 Organization, delete in its entirety and replace with the following:

Section AM.10 Organization: The Office of Financial Resources is headed by the Assistant Secretary for Financial Resources (ASFR). The Assistant Secretary for Financial Resources is the Departmental Chief Financial Officer (CFO), Chief Acquisition Officer (CAO) and Performance Improvement Officer (PIO), and reports to the Secretary. The office consists of the following components:

- Immediate Office of the Assistant Secretary (AM).
- Office of Budget (AML).
- Office of Finance (AMS).
- Office of Grants (AMU).
- Office of Acquisitions (AMV).

II. Under Chapter AM, "Office of the Assistant Secretary for Financial Resources," delete Chapter AMT, "Office of Grants and Acquisition Policy and Accountability," in its entirety and replace with the following:

#### Chapter AMU, Office of Grants (AMU) Section AMU.00 Mission

The Office of Grants (OG) provides Department-wide leadership, guidance, and oversight to constituent organizations, and coordinates long and short-range planning for HHS' grants management policies, practices, systems and workforce. OG provides technical assistance to the Department's OPDIVs and STAFFDIVs, evaluates effectiveness of the grants programs and processes; develops pertinent HHS-wide regulatory guidance, policies, and performance standards; maintains and reports

Departmental grant/financial assistance award information; and conducts special Departmental initiatives related to grants. OG fosters collaboration, innovation, and accountability in the administration and management of the grant functions throughout the Department. The OG provides input for coordinated Department positions on proposed legislation and Government regulations specific to grant-related matters. In addition to facilitating Departmental implementation of and compliance with existing laws and regulations, OG provides Departmental and government-wide leadership on implementation of the Federal Financial Accountability and Transparency Act (FFATA) for grant activities. OG is the organizational location for *Grants.gov*, which provides a Government-wide electronic portal for citizens to “Find” and “Apply” for Federal grant opportunities. OG represents the Department in dealing with the Office of Management and Budget (OMB), U.S. Government Accountability Office (GAO), other Federal agencies, and Congress in the area of grant policies and management. OG also manages activities associated with the training, development, and certification of—and strategic planning for—the Department’s grants management workforce.

#### Section AMU.10 Organization

OG is headed by a Deputy Assistant Secretary for Grants who reports to the Assistant Secretary for Financial Resources. The Deputy Assistant Secretary also serves as the Department’s Senior Grants Management Official. OG consists of the following components: Immediate Office of Grants (AMU); Division of Policy Oversight and Evaluation (AMU1); Division of Systems (AMU2); Division of Workforce Development (AMU3).

#### Section AMU.20 Functions

1. Immediate Office of Grants (AMU). The Immediate Office of Grants consists of the Deputy Assistant Secretary and support staff who assist in the management and administration of the Office’s functions, and facilitate and coordinate government wide initiatives and activities on behalf of the grant community.

2. Division of Grants Policy Oversight and Evaluation (AMU1). The Division of Policy Oversight and Evaluation (OGPOE) is headed by a Director. The Division formulates, oversees, and evaluates Department-wide implementation of grants policies governing the award and management of grants throughout HHS, in support of

existing laws, regulations, and OMB Circulars. Additionally, OGPOE: (a) Develops and implements HHS grants management regulations and publishes new policies and modifications in the HHS Grants Policy Directives (GPDs), including all directives necessary to implement new intergovernmental and HHS policies; (b) Represents the Department and serves as its liaison in interagency grants policy and management activities; maintains working relationships with OMB, U.S. General Services Administration (GSA), GAO and other Federal agencies to coordinate and assist in the development of proposed legislation and policy.

3. Division of Systems (AMU2). The Division of Systems (DS) is headed by a Director. The organization consists of the following components: *Grants.gov* (AMU21); Grants Management Systems Branch (AMU22).

a. *Grants.gov* Program Management Office (AMU21). The *Grants.gov* Program Management Office (GPMO) is headed by a Program Manager and provides leadership to Federal and non-Federal members of the Grant Community as the system manager of *Grants.gov*—the government-wide central portal where citizens can find and apply for Federal grants. The GPMO manages the full life cycle of *Grants.gov* system operations and maintenance including short-term and long-term enhancement activities to ensure users have a reliable system to find and apply for Federal grants. In addition, the GPMO: (a) Collects and evaluates user requirements and as appropriate integrates these adaptations into system change requests which are planned and executed according to government-wide capital planning and investment control practices; (b) Leads a government-wide collaborative effort to design, build and implement the “next generation” of *Grants.gov*; (c) Manages and collects funds to support the full lifecycle of *Grants.gov* system operations, maintenance and enhancement activities; (d) Serves as a liaison to ensure coordination with OMB, Federal CIO Council, Grants Policy Committee, Grants Executive Board and HHS leadership and other oversight organizations on the government-wide electronic grants initiative; (e) Manages the clearance and revision of government-wide grant forms and data elements used on *Grants.gov*; and (f) Conducts and coordinates outreach and training for grants management professionals, grantees and grantors on the use and capabilities of *Grants.gov*.

b. Grants Management Systems (AMU22). The Grants Management

Systems Branch (GMSB) is headed by a Branch Chief. This Branch plans, directs and coordinates the activities of the Office of Grants with respect to Departmental implementation of all electronic grants initiatives, such as: TAGGS, Government-wide Grants Management Line of Business, as well as management of select Grants internet and Intranet sites. GMSB represents the Department or the Office of Grants on matters of electronic assistance administration policy in dealing with recipients, OMB, other Federal agencies, and the public in general and leads Departmental coordination of grants system activities in support of the Federal Financial Accountability and Transparency Act including system interfaces with USASpending.gov.

4. Division of Workforce Development (DWD) (AMU3). Division of Workforce Development (DWD) develops strategy and related training opportunities to enhance the career development of grants management professionals both within the Department and Government-wide so as to facilitate the hiring and retention of a well-qualified and fully certified workforce of grants management professionals. DWD provides training and advice to the grants workforce across the Department and creates a training curriculum and certification program for the grants management officials across the Department. Additionally, DWD provides performance assessment Department-wide to improve workforce performance and enhance development opportunities within the workforce.

#### Chapter AMV, Office of Acquisitions (AMV) Section AMV.00 Mission

The Office of Acquisitions (OA) provides leadership, guidance, and oversight to constituent organizations, and coordinates long and short-range planning for HHS’ acquisition practices, systems and workforce. The OA provides technical assistance to the Department’s OPDIVs and STAFFDIVs; evaluates effectiveness of the acquisition programs and processes; develops pertinent HHS-wide regulatory guidance, policies, and performance standards; maintains Departmental contract award information; and conducts special Departmental initiatives related to acquisition. It also serves as the focal point for coordinating ASFR’s response to cross-cutting Freedom of Information Act (FOIA) requests, audits, and reports. The OA provides input for coordinated Department positions on proposed legislation and Government regulations specific to acquisition related matters. The OA also manages activities

associated with the training, development, and certification of—and strategic planning for—the Department’s acquisition workforce.

### Section AMV.10 Organization

OA is headed by a Deputy Assistant Secretary for Acquisitions who reports to the Assistant Secretary for Financial Resources. The Deputy Assistant Secretary also serves as the Department’s Senior Procurement Executive. OA consists of the following components: Immediate Office of Acquisitions (AMV); Division of Acquisition Systems, Governance, Integration & Modernization (AMV1); Division of Acquisition Policy, Governance, & Process Transformation (AMV2); the Division of Acquisition Performance & Program Management Office (AMV3); administratively supports the Office of Small and Disadvantaged Business Utilization (AMV4); and The Office of Recipient Integrity and Compliance (AMV5).

### Section AMV.20 Functions

1. Immediate Office of Acquisitions (AMV). The Immediate Office of Acquisitions consists of the Deputy Assistant Secretary and support staff who assist in the management and administration of the Office’s functions, and facilitate and coordinate OA-wide initiatives and activities on behalf of the acquisition community.

2. Division of Acquisition Systems, Governance, Integration & Modernization (AMV1). The Division of Acquisition Systems, Governance, and Integration & Modernization (DASGIM) is headed by a Director. DASGIM plans, directs and coordinates the activities of the Office of Acquisition with respect to Departmental implementation of all electronic acquisitions initiatives. Ensures systems comply with Federal policy as set by the Senior Procurement Executive, the DATA ACT, Buy Smarter and Accelerate. Provides oversight & maintenance & facilitation of Buy Smarter and Accelerate. Coordinates micro services development. DASGIM manages the Acquisition systems roadmap and facilitates and improves the acquisition system by: (a) Developing innovative processes and tools; (b) Acquiring, adopting, tailoring and sharing best practices.

3. Division of Acquisition Policy, Governance, & Process Transformation (AMV2). The Division of Acquisition Policy, Governance, & Process Transformation (DAPGPT) is headed by a Director. The Division provides leadership in the area of acquisition through policy development and implementation and workforce

planning, development, and training. The Division is responsible for formulating Department-wide acquisition policies governing acquisition activities, publishing and maintaining the HHS Acquisition Regulation (HHSAR), participating in government-wide acquisition rule-making through the Civilian Agency Acquisition Council, providing advice and technical assistance on matters related to HHS acquisition programs, managing workforce development issues for the Department’s acquisition workforce, managing the Departmental Contract Information System; and monitoring the adoption of acquisition policies by the Department’s OPDIVs and Staff Divisions (STAFFDIVs) to ensure consistent policy interpretation.

4. Division of Acquisition Performance & Program Management Office (AMV3). The Division of Acquisition Performance & Program Management Office (DAPPMO) is headed by a Director and provides advice, oversight and support regarding operational acquisition and business practices and issues. This Division conducts procurement management reviews, promotes consistent and standardized business practices. DAPPMO works with the other division within OA to develop innovative processes and tools acquiring, adopting, tailoring and sharing best practices. Leads the Department’s Strategic Sourcing Program and the acquisition aspects of the environmental program. DAPPMO provides expert consultation services; and manages the Department’s Government Purchase Card Program. Enables and implements category management, and risk monitoring. Establishes program performance metrics. The Office serves as the Department’s liaison relating to acquisition issues for OMB, Congress, GAO and the Office of the Inspector General (OIG) when requested and acts as the Ombudsman.

5. Office of Small & Disadvantaged Business Utilization (AMV4). The Office of Small & Disadvantaged Business Utilization (OSDBU) is headed by a Director who reports directly to the Deputy Secretary and is administratively supported by OA. The OSDBU fosters the use of small business as Federal contractors pursuant to Public Law 95–507 and has responsibility within the Department for policy, plans, and oversight to execute the functions under Sections 8 & 15 of the Small Business Act. The OSDBU provides leadership, policy, guidance and supervision, as well as coordinating short- and long-range strategic planning to assure that small business vendors

have a fair opportunity to compete for and receive business with the Department. The Office also provides technical assistance to the Department’s OPDIVs and STAFFDIVs; reviews and evaluates planned procurements to ensure that small businesses are given thorough consideration; evaluates effectiveness of the small business programs and processes; develops pertinent HHS-wide policies, guidance, and performance standards; maintains Departmental small business reports; and conducts special Departmental initiatives related to small and socioeconomic business concerns. The OSDBU manages the development and implementation of appropriate outreach programs aimed at heightening the awareness of the small business community to the contracting opportunities available within HHS. The OSDBU provides input for coordinated Department positions on proposed legislation and Government regulations on matters affecting cognizant small socioeconomic business programs. It also serves as the focal point for coordinating ASFR’s response to cross-cutting Freedom of Information Act (FOIA) requests, audits, and activities related to small business related efforts and programs.

6. Office of Recipient Integrity and Compliance (AMV5). The Office of Recipient Integrity and Compliance (ORIC) provides leadership, guidance, and oversight of the Department suspension and disbarment program, and coordinates long and short-range planning for HHS’ suspension and disbarment efforts. The ORIC provides technical assistance to the Department’s OPDIVs and STAFFDIVs; evaluates effectiveness of the programs and processes; develops pertinent HHS-wide regulatory guidance, policies, and performance standards; maintains Departmental suspension and disbarment information; and conducts special Departmental initiatives related to recipient integrity. The ORIC processes suspension and debarment cases, issues agency protest decisions, and handles task order and metrication Ombudsmen complaints, justification and approval requests, sole source approvals, requests for waivers and organizational conflict of interest issues. The Division also handles a variety of special projects as assigned by Chief Acquisition Officer. The ORIC processes suspension and debarment cases and provides direct support to the Suspension and Debarment Official (SDO). The SDO reviews recommendations made by the ORIC, makes present responsibility

determinations, and decides whether or not to take administrative actions such as suspensions or debarments.

Delegations of Authority. All delegations and re-delegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further re-delegation, provided they are consistent with this reorganization.

**Scott Rowell,**

*Assistant Secretary for Administration.*

[FR Doc. 2019-09459 Filed 5-7-19; 8:45 am]

**BILLING CODE 4150-24-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities" unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10 $\frac{3}{8}$ %, as fixed by the Secretary of the Treasury, is certified for the quarter ended March 31, 2019. This rate is based on the Interest Rates for Specific Legislation, "National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))" and "National Research Service Award Program (42 U.S.C. 288(c)(4)(B))." This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision. The rate was 10 $\frac{3}{4}$ % for the previous quarter ending December 31, 2018. Though available on the Department of Health and Human Services' website, this rate was inadvertently not published in the **Federal Register**.

Dated: April 17, 2019.

**David C. Horn,**

*Director, Office of Financial Policy and Reporting.*

[FR Doc. 2019-09445 Filed 5-7-19; 8:45 am]

**BILLING CODE 4150-04-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7014-N-15]

### 60-Day Notice of Proposed Information Collection: Pay for Success Pilot Application Requirements

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

**ACTION:** Corrected notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* July 8, 2019.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

**FOR FURTHER INFORMATION CONTACT:** Josh Geyer, Office of Environment and Energy, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email [Joshua.m.geyer@hud.gov](mailto:Joshua.m.geyer@hud.gov) or telephone (415) 489-6418. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is

seeking approval from OMB for the information collection described in Section A.

#### A. Overview of Information Collection

*Title of Information Collection:* Pay for Success Pilot Application Requirements.

*OMB Approval Number:* 2502-0613.

*OMB Expiration Date:* 1/31/2020.

*Type of Request:* This is a revision of a currently approved collection.

*Form Numbers:* HUD-2530, SF 424 family of forms, HUD-2880, HUD-424-CBW, HUD-9250, Certification of Owner Eligibility, Cooperative Agreement, Site-Specific Environmental Review (Part 1 of 2), and Office of Multifamily Housing Pay for Success Program Narrative Template.

- Form HUD-2530, Previous Participation Certification, is completed by the Intermediary. The Intermediary submits the form to HUD via *grants.gov* as part of the application package for the PFS pilot. The type of information collected includes the Intermediary's (principals) Name, Address, Social Number/IRS Employee Number, Signature, etc. The form is required to provide HUD with a certified report of all previous participation in HUD multifamily housing projects by those parties making application and is used by HUD to determine eligibility to participate in Multifamily programs.

- SF-424 family of forms (SF-424A-D, as applicable), Application for Federal Assistance and Assurances, is completed by the Intermediary. The Intermediary submits this family of forms to HUD via *grants.gov* as part of the application for the PFS pilot. The type of information collected includes the Intermediary's Name, EIN/TIN, Address, Email address, etc. This family of forms is required for use as a cover sheet for submission of preapplications and applications and related information under discretionary programs. Applicants are required to submit this family of forms to HUD as part of the application package for the PFS pilot.

- Form HUD-2880, Applicant/Recipient Disclosure/Update Report, is completed by the Intermediary. The Intermediary submits the form to HUD via the *grants.gov* as part of the application package for the PFS pilot. The type of information collected includes the Intermediary's Name, address, phone number, social security number and EIN, etc. The Intermediary is required to submit this form in order to provide accountability and integrity in the provision of assistance that is administered by HUD.

- Form HUD 424–CBW (excel spreadsheet), Detailed Budget Worksheet, is completed by the Intermediary. The Intermediary submits this form to HUD via email or US mail for approval. The type of information collected includes a detailed description of budget as it pertains to each participating property. The Intermediary submits this form to HUD in program phases for completion of the retrofits in all participating properties in the PFS program.

- Form HUD–9250, Funds Authorization, is completed by the Owner. The Owner submits this form by email or by US mail to HUD for approval. The type of information collected includes Owner's name, address, mortgagee, etc. Owners are required to submit this form to HUD to request withdrawal from the Reserve for Replacements or Residual Receipts Funds.

- Certification of Owner Eligibility, Owner must complete this form to be eligible to participate in the Pay for Success pilot. Owner submits certification to HUD for approval via email or by US mail. The type of information collected includes Owner's name, iREMS number, address, signature, etc. Owners must provide a certification to HUD that they and the property meet HUD eligibility requirements in order to be able to participate in the Pilot.

- Cooperative Agreement is administered by HUD's Office of Multifamily Housing Programs, which will have oversight of the Intermediaries, ensuring compliance with all included provisions and authorizing payments when and if required conditions are met. The type of information collected includes Date agreement was entered with Intermediary, total of units HUD awarded intermediary, signature and HUD official. The form is submitted to HUD/Intermediary via email or by US mail.

- Site-Specific Environment Review (Part 1 of 2), this form should be used only to initiate site-specific reviews for individual HUD-assisted properties undertaking energy and water conservation retrofits under the Multifamily Energy and Water Conservation Pay for Success Pilot. Intermediary completes the form and any relevant documents for each site identified to participate in the PFS Pilot and submits it to HUD to upload in the HUD Environmental Review Online System (HEROS).

- Office of Multifamily Housing Pay for Success Program Narrative Template is completed by the Intermediary and is

submitted to HUD via grants.gov. The type of information collected includes the Intermediary's name, EIN, organization name, etc. The narrative template is provided to Applicants under the Pay for Success Pilot program and will be evaluated by HUD.

*Description of the need for the information and proposed use:* Title LXXXI of the Fixing America's Surface Transportation Act (Pub. L. 114–94) authorizes the Department of Housing and Urban Development (HUD) to establish a demonstration program under which the Secretary may execute budget-neutral, performance-based agreements in fiscal years 2016 through 2019 that result in a reduction in energy or water costs. The legislation authorizes HUD to implement this pilot in up to 20,000 units of multifamily buildings participating in the project-based rental assistance (PBRA) program under section 8 of the United States Housing Act of 1937; supportive housing for the elderly program operating under section 202 of the Housing Act of 1959; and supportive housing for persons with disabilities under section 811(d)(2) of the Cranston-Gonzalez National Affordable Housing Act. The Statute authorizes HUD to execute performance-based agreements in fiscal years 2016 through 2019 covering up to 20,000 units in eligible properties. HUD is responsible for submitting annual program evaluation reports to Congress for the duration of the Pilot.

HUD is authorized under this legislation to establish a competitive process for selecting one or more qualified applicants to serve as Intermediaries who will, per agreements with HUD, be responsible for initiating and managing an energy and water conservation retrofit program at eligible properties. For the purpose of this program, applicants are defined as entities applying to participate. The documents that are the subject of this notice are those used by applicants applying to participate in this program. This information will allow applicants to submit their proposal and for the government to evaluate this information.

I. *Application.* The applicants responding to the NOFA will need to submit the before the prescribed deadline all standard forms including Previous Participation Certification (Form 2530), SF–424 family of forms, and Form HUD–2880; responses to the NOFA's rating factors describing the applicant's qualifications and proposed approach to all aspects of program implementation; and an Executive Summary of no more than four pages.

II. *Project Initiation.* Once selected, Intermediaries will enter into a Cooperative Agreement with HUD for each property they will be retrofitting under the program which will provide for performance-based payments by HUD based on the savings realized by HUD after the retrofit has been completed. Intermediaries will also be required to submit a copy of an executed PFS Contracts with each property owner that will be attached to the Cooperative and serve to identify the specific units being affected by the retrofit. Within 30 days of entering into each Cooperative Agreement, an Intermediary will submit to HUD a Work Plan consisting of a description of all documentary deliverables and due dates related to that Agreement and a proposed approach to periodic consultation with HUD for the purposes of oversight. The Intermediary will also submit a request for approval for the Independent Evaluator that will be validating key information submitted to HUD by the Intermediary over the course of the Cooperative Agreement. Each participating property owner will submit to HUD a Certification of Eligibility and a written agreement to replace equipment installed under the PFS Pilot only with equipment of like or better efficiency.

III. *Retrofit implementation.* Before a retrofit is implemented, the Intermediary will to develop and submit (with support from the property owner) a Site-specific Environmental Review form with the following information: High-level description of the project's scope of work; whether the property lies within a Coastal Barrier Resource unit; whether the property lies within a floodplain and proof of any required flood insurance policies; whether the project will destroy or modify a wetland; previous uses of the site and other evidence of contamination on or near the site; and whether any historic preservation policies apply to the site or the building(s). Intermediaries intending to use property-level reserve funds to pay for no more than half of the hard costs associated with the retrofit must submit a Scope of Work for the retrofit and a Reserve Analysis demonstrating that the retrofit will leave the property in as good or better financial shape as it would otherwise have been. The property owner must submit a Funds Authorization Form (HUD–9250) to request HUD's approval to use funds for this purpose.

IV. *Retrofit completion.* When the retrofit is completed, the Intermediary will submit a Certification of Retrofit Completion with the following information: A list of installed measures

with cost information; weather- and occupancy-normalized pre-retrofit consumption baselines for each affected tenant- and owner-paid utility, and all component data used to calculate those baselines, including utility consumption, rates, utility allowances, and climatic and occupancy data, and the calculation methodology used; weather- and occupancy-normalized post-retrofit consumption projections for each affected tenant- and owner-paid utility, and all component data used to calculate those baselines, including utility consumption, rates, utility allowances, and climatic and occupancy data, and the calculation methodology used; recalculated pre-retrofit baseline utility allowances and post-retrofit utility allowances for each unit size/type; recalculated pre-retrofit baseline owner rental subsidy and post-retrofit owner renter for each unit size/type; and post-retrofit per-unit annual savings to HUD relative to pre-retrofit baseline.

#### V. Performance payments.

Intermediaries will submit Invoices for Performance Payments concurrent with each property's annual rent adjustment cycle for the remainder of the period of performance of the Cooperative Agreement pertaining to that property. Invoices will include thorough documentation of all calculations contributing to the calculation of the amount being invoiced (as provided in the work plan) as well as a written certification by the Independent Evaluator that the performance payment has been calculated according to the methodology contained in the Cooperative Agreement; no adverse changes to the qualifications of the Independent Evaluator have occurred since the last submission from the Independent Evaluator; and no conflict of interest or apparent conflict of interest exists with the Intermediary or with respect to any property or Owner which would preclude the Independent Evaluator from performing its obligations in a truly independent manner. In the event of a change in the physical structure of a property during the period of performance which materially impacts utility usage, the Owner and the Intermediary will mutually agree upon an equitable modification of the pre-retrofit baseline for Owner-paid utility and/or of the pre-retrofit baseline of tenant utility allowances to reflect the impact of the change on utility usage and notify HUD of the change. In the event that the Intermediary wishes to assign performance payments to a third party, the Intermediary must submit to HUD a written request for approval.

VI. *Other program administration requirements.* Beginning with the execution of their first cooperative agreement with HUD, Intermediaries will submit quarterly reports regarding the status of all properties for which work under the PFS Pilot is unfinished, including the work that has been completed, the work that remains the anticipated projected completion date. If at any point it becomes necessary to replace a partner entity performing one or more core functions program administration functions (project management, capital sources, oversight of SOW development and retrofit implementation, and/or invoicing HUD), the Intermediary must collect and submit evidence from the proposed replacement partner entity similar to the qualifications detailed for the original partner entity in the Intermediary's initial application. As this is pilot program and HUD is responsible for submitting annual program evaluation reports to Congress, Intermediaries may be required to work with a program evaluation team and provide relevant information, possibly including (but not limited to) information pertaining to retrofit implementation, program administration, post-retrofit behavioral interventions, and certain fees. Intermediaries may be asked to clarify or provide additional context for previously submitted information, including additional details on their sources and uses of funds.

*Respondents (i.e. affected public):* Entities applying to be Intermediaries under this program, selected Intermediaries.

*Estimated Number of Respondents:* 15.

*Estimated Number of Annual Responses:* 1,000.

*Frequency of Response:* Varies.

*Average Hours per Response:* 10.8.

*Total Estimated Annual Burden:* 4,401.

#### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 2, 2019.

**Vance T. Morris,**

*Special Assistant to the Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 2019-09473 Filed 5-7-19; 8:45 am]

**BILLING CODE 4210-67-P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R1-ES-2019-N031;  
FXES11140100000-190-FF01E00000]

#### Capitol Boulevard Infrastructure Improvements Habitat Conservation Plan and Environmental Assessment for the Olympia Subspecies of the Mazama Pocket Gopher, Thurston County, Washington; Reopening of the Public Comment Period

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; reopening of the public comment period.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are announcing a new deadline for submittal of public comments on draft documents prepared in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The Service received an application from the City of Tumwater Public Works Department for an incidental take permit pursuant to the ESA. The applicant has requested a permit that would authorize "take" of the threatened Olympia pocket gopher incidental to construction of safety and infrastructure improvements in Thurston County, Washington. The application includes a HCP that describes the actions the applicant will take to minimize and mitigate the impacts of the taking on the covered species. A **Federal Register** notice of availability for the HCP and the draft environmental assessment (EA) addressing the HCP was published on December 26, 2018. As a result of the U.S. government partial lapse in appropriations, the website cited in the notice was not updated during the

entire comment period. In response, we are allowing additional time for public input on these draft documents. If you submitted a comment already, you need not resubmit it.

**DATES:** To ensure consideration, please submit written comments by May 23, 2019.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods:

- *Internet:* You may view or download copies of the HCP and draft EA and obtain additional information on the internet at <http://www.fws.gov/wafwo/>.

- *Email:* [wfwocomments@fws.gov](mailto:wfwocomments@fws.gov). Include "Tumwater Capitol Boulevard Safety and Infrastructure Improvements HCP/EA" in the subject line of the message.

- *U.S. Mail:* Public Comments Processing, Attn: FWS-R1-ES-2019-N031; U.S. Fish and Wildlife Service; Washington Fish and Wildlife Office; 510 Desmond Drive SE, Suite 102; Lacey, WA 98503.

- *In-Person Drop-off, Viewing, or Pickup:* Call 360-753-5823 to make an appointment (necessary for viewing or picking up documents only) during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Tim Romanski, Conservation Planning and Hydropower Branch Manager, Washington Fish and Wildlife Office (see **ADDRESSES**); 360-753-5823 (telephone). If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** We are announcing a new deadline for submittal of public comments on two draft documents prepared in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and section 10(a)(1)(B) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*). A **Federal Register** notice of availability for a draft environmental assessment (EA) addressing a habitat conservation plan (HCP) being developed by the City of Tumwater Public Works Department in support of its application for an ESA incidental take permit was published on December 26, 2018 (83 FR 66292). Public comments on these documents were due by January 25, 2019. However, due to a partial lapse in Federal budget appropriations, the draft HCP and EA were not made available to the public on the website referenced in the notice of availability. Consequently, we are

reopening the public comment period for an additional 15 calendar days. Reopening the comment period will allow the public an opportunity to review the proposed HCP and EA, which are now available on the referenced website, which is <http://www.fws.gov/wafwo/>. We invite the public to review and comment on both documents. The notice of availability contains additional background information, which is not repeated here.

#### Authority

We provide this notice in accordance with the requirements of section 10 of the ESA and NEPA and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

**Mary M. Abrams,**

*Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service.*

[FR Doc. 2019-09432 Filed 5-7-19; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX19WC00GJNV331; OMB Control Number 1028-0106]**

#### Agency Information Collection Activities; USGS Ashfall Report

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before July 8, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028-0106 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Kristi Wallace by email at [kwallace@usgs.gov](mailto:kwallace@usgs.gov), or by telephone at (907) 786-7109.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to

comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Abstract

The USGS provides notifications and warnings to the public of volcanic activity in the US in order to reduce the loss of life, property, and economic and societal impacts. Ash fallout to the ground can pose significant disruption and damage to buildings, transportation, water and wastewater, power supply, communications equipment, agriculture, and primary production leading to potentially substantial societal impacts and costs, even at thicknesses of only a few millimeters or inches. Additionally, fine-grained ash, when ingested can cause health impacts to humans and animals. USGS will use reports entered in real time by respondents of ashfall in their local area to correct or refine ashfall forecasts as the ash cloud moves downwind. Retrospectively these reports will enable USGS to improve their ashfall models and further research into eruptive processes.

This project is a database module and web interface allowing the public and Alaska Volcano Observatory (AVO) staff to enter reports of ashfall in their local area in real time and retrospectively following an eruptive event. Users browsing the AVO website during eruptions will be directed towards a web form allowing them to fill in ashfall information and submit the information to AVO.

Compiled ashfall reports are available in real-time to AVO staff through the AVO internal website. A pre-formatted summary report or table that distills information received online will show ashfall reports in chronological order with key fields including (1) date and time of ashfall, (2) location, (3) positive or negative ashfall (4) name of observer, and (5) contact information is easily viewable internally on the report so that calls for clarification can be made by AVO staff quickly and Operations room staff can visualize ashfall information quickly.

Ashfall report data will also be displayed on a dynamic map interface and show positive (yes ash) and negative (no ash) ashfall reports by location. Ashfall reports (icons) will be publicly displayed for a period of 24 hours and shaded differently as they age so that the age of reports is obvious.

The ashfall report database will help AVO track eruption clouds and associated fallout downwind. These reports from the public will also give scientists a more complete record of the amount and duration and other conditions of ashfall. Getting first-hand accounts of ashfall will support model ashfall development and interpretation of satellite imagery. AVO scientists will—as time allows—be able to contact the individuals using their entered contact information for clarification and details. Knowing the locations from which ashfall reports have been filed will improve ashfall warning messages, AVO Volcanic Activity Notifications, and make fieldwork more efficient. AVO staff will be able to condense and summarize the various ashfall reports and forward that information on to emergency management agencies and the wider public. The online form will also free up resources during exceedingly busy times during an eruption, as most individuals currently phone AVO with their reports.

*Title of Collection:* USGS Ashfall Report.

*OMB Control Number:* 1028–0106.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* General Public, local governments and emergency managers.

*Total Estimated Number of Annual Respondents:* We are likely to ask individuals to respond 1–6 times year which is the number of past eruptions we have during any one year in Alaska.

*Total Estimated Number of Annual Responses:* Approximately 250 individuals affected by a volcanic ashfall event each year.

*Estimated Completion Time per Response:* We estimate the public reporting burden will average 5 minutes per response. This includes the time for reviewing instructions, and answering a web-based questionnaire.

*Total Estimated Number of Annual Burden Hours:* 21 hours.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* On occasion, after each ashfall event.

*Total Estimated Annual Nonhour Burden Cost:* We have not identified any “non-hour cost” burdens associated with this collection of information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Thomas Murray,**

*Director, Volcano Science Center.*

[FR Doc. 2019–09400 Filed 5–7–19; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GX19NM00FU5010; OMB Control Number 1028–0094]

#### Agency Information Collection Activities; Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** U.S. Geological Survey (USGS), Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before July 8, 2019.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey,

Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028–0094 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Joseph East, Eastern Energy Resources Science Center, U.S. Geological Survey by email at [jeast@usgs.gov](mailto:jeast@usgs.gov), or by telephone at (703) 648–6450.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** The primary objective of the National Coal Resources Data System (NCRDS) is to advance the understanding of the energy endowment of the United States (U.S.) by gathering and organizing digital geologic information related to coal, coal bed gas, shale gas, conventional and

unconventional oil and gas, geothermal, and other energy resources and related information regarding these resources, along with environmental impacts from using these resources. These data are needed to support regional or national assessments concerning energy resources. Requesting external cooperation is a way for NCRDS to collect energy data and perform research and analyses on the characterization of geologic material, and obtain other information (including geophysical or seismic data, sample collection for generation of thermal maturity data) that can be used in energy resource assessments and related studies.

The USGS will issue a call for proposals to support researchers from State Geological Surveys and associated accredited universities that can provide geologic data to support NCRDS and other energy assessment projects being conducted by the USGS.

Data submitted to NCRDS by external cooperators constitute more than two-thirds of the USGS point-source stratigraphic database (USTRAT) on coal occurrence. This program is conducted under various authorities, including 30 U.S.C. 208–1, 42 U.S.C. 15801, and 43 U.S.C. 31 *et seq.* This collection will consist of applications, proposals and reports (annual and final).

*Title of Collection:* National Coal Resources Data System (NCRDS).

*OMB Control Number:* 1028–0094.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* Individuals; State, local and tribal governments; State Geological Surveys, universities, and businesses.

*Total Estimated Number of Annual Respondents:* 21.

*Total Estimated Number of Annual Responses:* 21.

*Estimated Completion Time per Response:* 25 hours.

*Total Estimated Number of Annual Burden Hours:* 525 hours.

*Respondent's Obligation:* Required to Obtain or Retain a Benefit.

*Frequency of Collection:* One time every 5 years for applications and final reports; annually for progress reports.

*Total Estimated Annual Non-hour Burden Cost:* There are no “non-hour cost” burdens associated with this IC.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Margo Corum,**

*Associate Program Coordinator.*

[FR Doc. 2019–09386 Filed 5–7–19; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

[192A2100DD/AAKC001030/  
AOA501010.999900253G]

#### Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendment in the State of Oklahoma

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** The State of Oklahoma entered into a compact amendment with the Shawnee Tribe governing certain forms of class III gaming; this notice announces the approval of the Non-House-Banked Table Games Supplement to the compact between the Shawnee Tribe and the State of Oklahoma.

**DATES:** The compact amendment takes effect on May 8, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

**SUPPLEMENTARY INFORMATION:** Under section 11 of the Indian Gaming Regulatory Act (IGRA) Public Law 100–497, 25 U.S.C. 2701 *et seq.*, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in class III gaming activities on Indian lands. As required by IGRA and 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The compact amendment authorizes the Tribe to engage in certain additional class III gaming activities, and provides for the application of existing revenue sharing agreements to the additional forms of class III gaming.

Dated: April 16, 2019.

**John Tahsuda,**

*Principal Deputy Assistant Secretary—Indian Affairs.*

[FR Doc. 2019–09468 Filed 5–7–19; 8:45 am]

**BILLING CODE 4337–15–P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63644000  
DR2000000.CH7000 190D1113RT]

#### Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Notice.

**SUMMARY:** Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require the Office of Natural Resources Revenue (ONRR) to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. Consistent with these requirements, this notice provides major portion prices for the 12 months of calendar year 2017.

**DATES:** The due date to pay additional royalties based on the major portion prices is July 8, 2019.

#### FOR FURTHER INFORMATION CONTACT:

Calculation of Prices Information: Robert Sudar, Manager, Market & Spatial Analytics, ONRR, at (303) 231–3511, or email to [Robert.Sudar@onrr.gov](mailto:Robert.Sudar@onrr.gov); mailing address—Office of Natural Resources Revenue, P.O. Box 25165, MS 64310B, Denver, Colorado 80225–0165.

*Reporting Information:* Lee-Ann Martin, Program Manager, Reference & Reporting Management, ONRR, at (303) 231–3313, or email to [Leeann.Martin@onrr.gov](mailto:Leeann.Martin@onrr.gov); mailing address—Office of Natural Resources Revenue, P.O. Box 25165, MS 63300B, Denver, Colorado 80225–0165.

**SUPPLEMENTARY INFORMATION:** On August 10, 1999, ONRR's predecessor, the Minerals Management Service, published a final rule titled “Amendments to Gas Valuation Regulations for Indian Leases” effective January 1, 2000 (64 FR 43506). The gas valuation regulations apply to all gas production from Indian (Tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, as well as the due date for additional royalty payments. See 30 CFR 1206.174(a)(4)(ii). If you owe additional royalties based on

a published major portion price, you must submit to ONRR, by the due date, an amended form ONRR-2014, Report of Sales and Royalty Remittance. If you do not pay the additional royalties by the due date, ONRR will bill you late

payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended form ONRR-2014. The table below lists the major portion prices for all designated areas not

associated with an index zone. The due date is the end of the month, following 60 days after the publication date of this notice in the **Federal Register**.

#### GAS MAJOR PORTION PRICES (\$/MMBtu) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2017	Feb 2017	Mar 2017	Apr 2017	May 2017	Jun 2017	Jul 2017	Aug 2017	Sept 2017	Oct 2017	Nov 2017	Dec 2017
Blackfeet Reservation .....	2.66	2.31	2.35	2.61	2.73	2.36	1.61	1.73	0.99	0.70	2.22	1.94
Fort Belknap Reservation .....	3.61	2.95	2.11	2.42	2.40	2.55	2.38	2.36	2.36	2.26	2.35	2.54
Fort Berthold Reservation .....	3.62	2.77	2.25	2.54	2.54	2.49	2.38	2.54	2.55	2.49	2.67	3.67
Fort Peck Reservation .....	3.55	3.19	2.53	2.94	2.79	2.48	2.78	2.86	3.11	3.76	3.52	3.55
Navajo Allotted Leases in the Navajo Reservation .....	3.40	3.06	2.36	2.63	2.63	2.72	2.65	2.61	2.55	2.41	2.46	2.61
Turtle Mountain Reservation .....	3.68	2.81	2.06	2.38	2.34	2.49	2.49	2.60	2.60	2.56	3.16	2.83

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the ONRR website at <http://www.onrr.gov/ReportPay/PDFDocs/991201.pdf>.

**Authorities:** Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*; Indian Mineral Development Act of 1920, 30 U.S.C. 2103 *et seq.*; Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 *et seq.*

**Gregory J. Gould,**

Director for Office of Natural Resources Revenue.

[FR Doc. 2019-09404 Filed 5-7-19; 8:45 am]

BILLING CODE 4335-30-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1117]

### Certain Full-Capture Arrow Rests and Components Thereof; Commission Determination Not To Review an Initial Determination Granting Complainant's Motion for Summary Determination of Violation of Section 337 by the Defaulting Respondents; Request for Written Submissions on Remedy, Bonding, and the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 13) of the presiding administrative law judge ("ALJ"), granting complainant's motion for summary determination of violation of section 337 of the Tariff Act of 1930, by the defaulting respondents. The Commission is requesting written submissions on remedy, bonding, and the public interest.

#### FOR FURTHER INFORMATION CONTACT:

Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 11, 2018, based on a complaint filed on behalf of Bear Archery, Inc. ("Bear Archery") of Evansville, Indiana. 83 FR 27021-22 (June 11, 2018). 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 full-capture arrow rests and components thereof by reason of infringement of certain claims of U.S. Patent No. 6,978,775 ("the '775 patent"). The Commission's notice of investigation named as respondents 2BULBS Technology Co. Ltd. of Jiangsu, China; Ningbo Linkboy Outdoor Sports Co., Ltd. of Zhejiang, China; Shenzhen Keepmyway Tech. Co., Ltd., Wenqing Zhang, Tingting Ye, and Tao Li, all of Guangdong, China; Zhengzhou IRQ Outdoor Sports Co., Ltd. of Henan, China; and Sean Yuan of Shandong, China. The Office of Unfair Import

Investigations ("OUII") is also a party to the investigation. All respondents in the investigation have been found in default. *See* Order No. 9 (Oct. 29, 2018), *unreviewed by* Comm'n Notice (Nov. 26, 2018).

On October 26, 2018, Bear Archery moved for summary determination of violation of section 337 by the defaulting respondents and requested a general exclusion order ("GEO"). On November 21, OUII filed a response supporting the motion.

The ALJ issued the subject ID on March 19, 2019, granting the motion for summary determination and finding a violation of section 337 for the '775 patent. Specifically, the ALJ found that Bear Archery established infringement of claims 1-2 and 32 of the '775 patent with respect to each defaulting respondent's accused product by substantial, reliable, and probative evidence. The ALJ recommended that the Commission issue a GEO if it finds a violation of section 337. No party petitioned for review of the subject ID.

Having examined the record of this investigation, the Commission has determined not to review the subject ID.

As noted above, all eight respondents were found in default. Section 337(g) and Commission Rule 210.16(c) authorize the Commission to issue relief against respondents found in default unless, after considering the public interest, it finds that such relief should not issue. Before the ALJ, Bear Archery sought a GEO under section 337(g)(2).

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for

consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843, Comm'n Op. at 7-10 (December 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

**Written Submissions:** Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

Complainant and OUII are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the patent expires, the HTSUS numbers under which the accused products are imported, and to supply the names of known importers of the products at issue in this investigation. The written submissions and proposed remedial orders must be filed no later than close of business on [two weeks from the date of this notice], 2019. Reply submissions must be filed no later than the close of business on [one week later], 2019. No

further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit eight true paper copies to the Office of the Secretary pursuant to Section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1117") in a prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,<sup>1</sup> solely for cybersecurity purposes. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

<sup>1</sup> All contract personnel will sign appropriate nondisclosure agreements.

Issued: May 2, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-09396 Filed 5-7-19; 8:45 am]

BILLING CODE 7020-02-P

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-486 and 731-TA-1195-1196 (Review)]

### Utility Scale Wind Towers From China and Vietnam; Determinations

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that revocation of the countervailing duty order on utility scale wind towers from China and the antidumping duty orders on utility scale wind towers from China and Vietnam would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>2</sup>

#### Background

The Commission, pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)), instituted these reviews on January 2, 2018 (83 FR 142) and determined on April 9, 2018 that it would conduct full reviews (83 FR 17446, April 19, 2018). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on September 13, 2018 (83 FR 46516). Effective February 4, 2019, the Commission revised its schedule due to the lapse in appropriations and ensuing cessation of Commission operations (84 FR 2926, February 8, 2019). The Commission cancelled the hearing scheduled on February 28, 2019 following a request by the sole party to the proceeding (84 FR 7934, March 5, 2019). In lieu of a hearing, the domestic producers responded to written questions submitted by the Commission as part of their posthearing brief.

The Commission made these determinations pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Chairman David S. Johanson dissenting with respect to the antidumping duty order on utility scale wind towers from Vietnam. Commissioner Meredith M. Broadbent not participating.

completed and filed its determinations in these reviews on May 2, 2019. The views of the Commission are contained in USITC Publication 4888 (April 2019), entitled *Utility Scale Wind Towers from China and Vietnam: Investigation Nos. 701-TA-486 and 731-TA-1195-1196 (Review)*.

By order of the Commission.

Issued: May 2, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-09395 Filed 5-7-19; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1043]

### Certain Electrical Connectors, Components Thereof, and Products Containing the Same; Notice of Request for Statements on the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the presiding administrative law judge (“ALJ”) has issued a Final Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief should the Commission find a violation of section 337. This notice is soliciting public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

**FOR FURTHER INFORMATION CONTACT:**

Clint A. Gerdine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competition conditions in the United States economy, the production of like or directly competitive articles in the United States consumers, it finds that such articles should not be excluded from entry. 19 U.S.C. 1337(d)(1).

The Commission is soliciting comments on public interest issues raised by the recommended relief. The ALJ recommended, should the Commission find a violation, that the Commission issue a limited exclusion order directed against certain electrical connectors, components thereof, and products containing the same imported, sold for importation, and/or sold after importation by respondents Robert Bosch GmbH of Baden-Wuerttemberg, Germany; Bosch Automotive Products (Suzhou) Co., Ltd. of Jiangsu, China; Robert Bosch LLC of Broadview, Illinois; Robert Bosch, Sistemas Automatrices, S.A. de C.V. of Chihuahua, Mexico; Robert Bosch, Ltda. of Sao Paulo, Brazil; and Hon Hai Precision Industry Co., Ltd. and Foxconn Interconnect Technology, Ltd., both of New Tapei City, Taiwan.

The Commission is interested in further development of the record on the public interest in its investigations. Accordingly, parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge’s Recommended Determination on Remedy and Bond issued in this investigation on April 12, 2019. Comments should address whether issuance of a remedial order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) Explain how the articles potentially subject to the recommended order are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the recommended orders;

(iv) indicate whether Complainant, Complainant’s licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended order would impact consumers in the United States.

Written submissions must be filed by the close of business on Tuesday, May 21, 2019.

Persons filing written submissions must file the original document electronically on or before the deadline stated above and submit eight true paper copies to the Office of the Secretary pursuant to Commission Rule 210.4(f), CFR part 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337-TA-1043”) in a prominent place on the cover page and/or the first page. (See Handbook on Filing Procedures, [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf)). Persons with questions regarding filing should contact the Secretary at (202) 205-2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR part 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 2, 2019.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2019-09397 Filed 5-7-19; 8:45 am]

**BILLING CODE 7020-02-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1117-0038]

**Agency Information Collection Activities; Proposed eCollection, eComments Requested; Extension Without Change of a Previously Approved Collection; Reporting and Recordkeeping for Digital Certificates****AGENCY:** Drug Enforcement Administration, Department of Justice.**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice, Drug Enforcement Administration (DEA), is submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register**, on February 22, 2019, allowing for a 60 day comment period.

**DATES:** Comments are encouraged and will be accepted for 30 days until June 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lynnette M. Wingert, Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152; Telephone: (202) 598-6812. Written comments and/or suggestions may also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or sent to OIRA\_submission@omb.eop.gov.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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 proposed to be collected can be enhanced; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Reporting and Recordkeeping for Digital Certificates.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form Numbers:*

DEA Form 251: CSOS DEA Registrant Certificate Application.

DEA Form 252: CSOS Principal Coordinator/Alternate Coordinator Certificate Application.

DEA Form 253: CSOS Power of Attorney Certificate Application.

DEA Form 254: CSOS Certificate Application Registrant List Addendum.

The Department of Justice component is the Drug Enforcement Administration, Diversion Control Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Affected public (Primary):* Business or other for-profit.

*Affected public (Other):* None.

*Abstract:* The DEA collects information in regards to reporting and recordkeeping for digital certificates. The application for a digital certificate is required to ensure that the person applying for the certificate is either a DEA registrant or someone who has power of attorney from a DEA registrant to sign orders for Schedule I and II substances. The DEA Certification Authority uses the information to verify the person's identity and eligibility to hold a DEA-issued digital certificate.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The DEA estimates 10,064 respondents complete 26,959 responses annually, on an as-needed basis—on average 2.68 responses per respondent per year. Each response takes approximately 1.5 hours to complete, for an average per-respondent annual total of 4.02 hours.

6. *An estimate of the total public burden (in hours) associated with the*

*proposed collection:* The DEA estimates that this collection takes 40,439 annual burden hours.

If additional information is required, please 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, Suite 3E.405B, Washington, DC 20530.

Dated: May 3, 2019.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2019-09435 Filed 5-7-19; 8:45 am]

**BILLING CODE 4410-09-P**

**NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**

[NARA 2019-0004; NARA-2019-021]

**Records Schedules; Availability and Request for Comments**

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

**DATES:** NARA must receive comments by June 24, 2019.

**ADDRESSES:** You may submit comments by either of the following methods. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>

- *Mail:* Records Appraisal and Agency Assistance (ACR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740-6001.

**FOR FURTHER INFORMATION CONTACT:** Records Management Operations by email at [request.schedule@nara.gov](mailto:request.schedule@nara.gov), by mail at the address above, or by phone at 301-837-1799.

**SUPPLEMENTARY INFORMATION:**

## Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as “other” documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact [request.schedule@nara.gov](mailto:request.schedule@nara.gov) for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. You may request additional information about the disposition process through the contact information listed above.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The

RCS contains all schedules approved since 1973.

## Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

## Schedules Pending

1. Department of the Air Force, Agency-wide, Sexual Assault Prevention and Response Program (DAA-AFU-2018-0006).
2. Department of Agriculture, Agency-wide, Management Improvement Program Records (DAA-0016-2019-0003).
3. Department of Agriculture, Food and Nutrition Service, Supplemental Nutrition Assistance Program (SNAP) Waivers (DAA-0462-2019-0001).
4. Department of Agriculture, Food Safety and Inspection Service, Lab Decommissioning Records (DAA-0584-2019-0003).
5. Department of Agriculture, Forest Service, Interpretive Service (DAA-0095-2018-0042).
6. Department of Agriculture, Forest Service, Water Uses and Development (DAA-0095-2018-0056).
7. Department of Agriculture, Forest Service, Minerals and Geology Certification (DAA-0095-2018-0066).
8. Department of Agriculture, Forest Service, Invasive Species (DAA-0095-2018-0067).
9. Department of Agriculture, Forest Service, State Tribal and County and Local Agencies, Public and Private Organizations (DAA-0095-2018-0079).
10. Department of Agriculture, Forest Service, Appeals and Litigation (DAA-0095-2018-0080).
11. Department of Agriculture, Forest Service, Public Involvement Programs (DAA-0095-2018-0081).
12. Department of Agriculture, Forest Service, Library Administration (DAA-0095-2018-0083).
13. Department of Agriculture, Forest Service, Direct Programs (DAA-0095-2018-0087).
14. Department of Commerce, U.S. Patent and Trademark Office, Office of the Ombudsman Records (DAA-0241-2018-0005).
15. Department of Health and Human Services, Centers for Disease Control, Technology Transfer and Intellectual Property (DAA-0442-2018-0003).
16. Department of Health and Human Services, Food and Drug Administration, Polio Files (DAA-0088-2018-0007).
17. Department of Health and Human Services, National Institutes of Health, Animal Husbandry and Veterinary Services Records (DAA-0443-2018-0003).
18. Department of Health and Human Services, National Institutes of Health, Intramural Research Clinical Care Services Records (DAA-0443-2019-0001).
19. Department of Homeland Security, Bureau of Customs and Border Protection, Administrative and Management Records-General Enterprise Support (DAA-0568-2017-0012).
20. Department of Homeland Security, United States Citizenship and Immigration Services, I-862 Notice to Appear (DAA-0566-2019-0020).
21. Department of the Treasury, Internal Revenue Service, Competent Authority Arrangement Case Files (DAA-0058-2017-0015).
22. Department of the Treasury, Internal Revenue Service, Office of Professional Responsibility Disciplinary Files (DAA-0058-2019-0002).
23. Administrative Office of the United States Courts, Judicial Services Office, Legislative Files (DAA-0116-2019-0006).
24. Federal Motor Carrier Safety Administration, Agency-wide, Commercial Driver’s License Drug and Alcohol Clearinghouse Database (DAA-0557-2019-0004).
25. Federal Retirement Thrift Investment Board, Office of Enterprise

Planning, Projects and Enterprise Planning Records (DAA-0474-2018-0004).

26. Federal Retirement Thrift Investment Board, Office of External Affairs, External Affairs Records (DAA-0474-2017-0004).

27. Government Publishing Office, Agency-wide, Revisions to the Comprehensive Schedule (DAA-0149-2018-0001).

28. Surface Transportation Board, Office of Proceedings, Finance Dockets (DAA-0134-2013-0025).

**Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2019-09461 Filed 5-7-19; 8:45 am]

**BILLING CODE 7515-01-P**

## NATIONAL SCIENCE FOUNDATION

### STEM Education Advisory Panel Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

*Name and Committee Code:* STEM Education Advisory Panel (#2624).

*Date and Time:* May 31, 2019; 9:00 a.m.–12:00 p.m.

*Place:* National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

*Type of Meeting:* Closed.

*Contact Person:* Keaven Stevenson, Directorate Administrative Coordinator, Room C 11044, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Contact Information: 703-292-8663/*kstevens@nsf.gov*.

*Purpose of Meeting:* To share and collect information in support of members' role in advising the Committee on Science, Technology, Engineering, and Mathematics Education (CoSTEM).

*Agenda:* Update and discussion on an internal government draft report.

*Reason for Closing:* The panel will review and discuss a draft government report. This discussion must be kept confidential as the conversation will be about potential actions and/or activities agencies are considering for the future. These matters are exempt under 5 U.S.C. 552b(c), (9)(B) of the Government in the Sunshine Act.

Dated: May 2, 2019.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2019-09357 Filed 5-7-19; 8:45 am]

**BILLING CODE 7555-01-P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 1:00 p.m., Tuesday, May 21, 2019.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

**STATUS:** The one item is open to the public.

**MATTERS TO BE CONSIDERED:**

58913 Railroad Accident Report—Amtrak Passenger Train 501 Derailment, 12/18/2017, DuPont, WA

**NEWS MEDIA CONTACT:** Telephone: (202) 314-6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314-6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, May 15, 2019.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov*.

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov*.

**FOR MORE INFORMATION CONTACT:** Candi Bing at (202) 314-6403 or by email at *bingc@ntsb.gov*.

**FOR MEDIA INFORMATION CONTACT:** Terry Williams at (202) 314-6100 or by email at *terry.williams@ntsb.gov*.

Dated: Monday, May 6, 2019.

**LaSean R. McCray,**

*Assistant Federal Register Liaison Officer.*

[FR Doc. 2019-09625 Filed 5-6-19; 4:15 pm]

**BILLING CODE 7533-01-P**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collection for OMB Review; Comment Request; Request for Coverage Determination

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, a collection of information necessary for PBGC to determine whether a plan is covered under title IV of the Employee Retirement Security Income Act of 1974.

This notice informs the public of PBGC's request and solicits public comment on the collection.

**DATES:** Comments must be submitted by June 7, 2019.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA\_submission@omb.eop.gov* or by fax to 202-395-6974.

A copy of the request will be posted on PBGC's website at: <https://www.pbgc.gov/prac/laws-and-regulations/information-collections-under-omb-review>. It may also be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026; faxing a request to 202-326-4042; or, calling 202-326-4040 during normal business hours (TTY users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040). The Disclosure Division will email, fax, or mail the information to you, as you request.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026; 202-326-4400, extension 6563. TTY users may call the Federal Relay Service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400, extension 6563.

**SUPPLEMENTARY INFORMATION:** PBGC insures defined benefit pension plans covered under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). A plan is covered if it is described in section 4021(a) of ERISA and does not meet one of the exemptions from coverage listed in section 4021(b)(1)-(13). If a question arises about whether a plan is covered under title IV, PBGC may make a coverage determination.

The proposed form and instructions would be used by a plan sponsor or plan administrator to request a coverage determination and would be suitable for all types of requests. The proposed form would highlight the four plan types for which coverage determinations are most frequently requested: (1) Church plans as listed in section 4021(b)(3) of ERISA; (2) plans that are established and maintained exclusively for the benefit of plan sponsors' substantial owners as listed in section 4021(b)(9); (3) plans covering, since September 2, 1974, no more than 25 active participants that are

established and maintained by professional services employers as listed in section 4021(b)(13); and (4) Puerto Rico-based plans within the meaning of section 1022(i)(1) of ERISA.

PBGC needs this information collection to determine whether a plan is covered or not covered under title IV. Information provided to PBGC would be confidential to the extent provided in the Freedom of Information Act and the Privacy Act.

On December 4, 2018, PBGC published in the **Federal Register** (at 83 FR 62629) a notice informing the public of its intent to request an approval of this collection of information. PBGC received comments from three commenters about this collection of information. One commenter expressed approval for the creation of the form for its intended purpose. The other two commenters recommended some changes. After consideration of these recommendations, PBGC made some changes to the form and instructions. Among the changes, in response to a suggestion to allow a plan not yet in existence to request a coverage determination, PBGC modified the form and instructions to enable certain plans not yet established to use the form to request an opinion from PBGC. The instructions now explain that, under a pilot program, a plan that is proposed but not yet established may request an opinion from PBGC as to whether the sponsoring employer is a professional service employer under section 4021(b)(13) of ERISA or whether all participants are substantial owners under section 4021(b)(9). The comments and PBGC's rationale for its decisions are discussed in the supporting statement submitted to OMB for this information collection.

PBGC is requesting that OMB approve of the collection for three years. 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.

PBGC estimates that 425 forms would be submitted each year. PBGC estimates that each form would require approximately 20 hours to complete by a combination of plan office staff (50%) and outside professionals (attorneys and actuaries) (50%). PBGC estimates an annual hour burden of 4,250 hours (based on plan office time). The estimated dollar equivalent of this hour burden, based on an assumed hourly rate of \$75 for administrative, clerical, and supervisory time is \$318,750. PBGC estimates an annual cost burden of \$1,487,500 (based on 4,250 professional

hours assuming an average hourly rate of \$350).

Issued in Washington, DC.

**Hilary Duke,**

*Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

[FR Doc. 2019-09394 Filed 5-7-19; 8:45 am]

**BILLING CODE 7709-02-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85760; File No. SR-CboeBZX-2019-032]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Under BZX Rule 14.11(d)(2)(K)(i) Shares of the iPath S&P MLP ETN Issued by Barclays Bank PLC

May 2, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that on April 25, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act <sup>3</sup> and Rule 19b-4(f)(6) thereunder. <sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed rule change to list and trade under BZX Rule 14.11(d)(2)(K)(i) shares of the iPath S&P MLP ETN (the “Notes”) issued by Barclays Bank PLC (“Barclays” or the “Issuer”), which are currently listed on NYSE Arca, Inc. (“Arca”). The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act. <sup>5</sup>

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade the Notes <sup>6</sup> on the Exchange. The Exchange is submitting this proposed rule change because the Index <sup>7</sup> does not currently meet all of the “generic” listing requirements of BZX 14.11(d)(2)(K)(i)(a)(2) <sup>8</sup> applicable to the listing of Equity Index-Linked Securities. The Index meets all requirements of Rule 14.11(d)(2)(K)(i) except for Rule 14.11(d)(2)(K)(i)(a)(2)(C) <sup>9</sup> and will

<sup>6</sup> The Exchange notes that the Notes are currently listed on Arca pursuant to that exchange's generic listing standards.

<sup>7</sup> The index underlying the Notes is the S&P MLP Index (the “Index”). The Index is designed to provide exposure to leading partnerships that trade on major U.S. exchanges and are classified in the GICS Energy Sector and GICS Gas Utilities Industry according to the Global Industry Classification Standard. It includes both master limited partnerships (“MLPs”) and publicly traded limited liability companies which have a similar legal structure to MLPs and share the same tax benefits as MLPs (the “Index Constituents”). The Index is calculated, maintained and published by S&P Dow Jones Indices LLC (the “Index Provider”). The composition of the Index is rebalanced annually after the market close of the third Friday of October.

<sup>8</sup> The Commission approved BZX Rule 14.11(d) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>9</sup> BZX Rule 14.11(d)(2)(K)(i)(a)(2)(C) provides that no underlying component security (excluding Derivative Securities Products and Linked Securities) will represent more than 25% of the weight of the index, and, to the extent applicable, the five highest weighted component securities in the index (excluding Derivative Securities Products and Linked Securities) do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities). Specifically, the five highest weighted component securities in the Index, as defined below, represent 52% of the weight of the Index.

continue to meet all other requirements of Rule 14.11(d)(2)(K)(i) on an ongoing basis. The Exchange notes that the Notes are currently listed on Arca and the Notes are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

Specifically, the Exchange submits this rule filing because the Index exceeds the concentration limitation for initial listing on the Exchange included in Rule 14.11(d)(2)(K)(i)(a)(2)(C) by less than 3%. The Notes will meet the continued listing standards applicable to Equity Index-Linked Securities under Rule 14.11(d)(2)(K)(i)(b)(1)(A)<sup>10</sup> on a continuous basis, even though the Index does not currently meet the initial listing requirements under the Initial Listing Rule. Upon rebalance in October 2019, the Index will meet the concentration limitations applicable under both the Initial Listing Rule and the Continued Listing Rule and would be able to list on the Exchange pursuant to the generic listing standards applicable to Equity Index-Linked Securities at that time.<sup>11</sup> However, the five highest dollar weighted components in the Index currently represent 52.82% of the weight of the Index.

As such, the Exchange is submitting this proposal in order to allow the Notes to list and trade on the Exchange pursuant to Rule 14.11(d)(2)(K)(i) in a manner identical to the way that the Notes are currently listed on Arca—pursuant to the generic listing standards applicable to Equity Index-Linked Securities with the obligation to comply with all continued listing obligations under that rule. In the event that the Index does not meet the requirements of Rule 14.11(d)(2)(K)(i)(b)(1)(B) upon rebalance or the Index or Notes fail to meet any other continued listing obligation under Rule 14.11(d), the Exchange will initiate delisting proceedings pursuant to Rule 14.12.

All statements and representations made in this filing regarding (a) the description of the Index, (b) limitations on Index or portfolio holdings or

reference assets, (c) the dissemination and availability of the Index, and reference assets; or (d) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Notes on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Notes to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements.

#### S&P MLP Index

The Index is designed to provide exposure to leading partnerships that trade on major U.S. exchanges and are classified in the GICS Energy Sector and GICS Gas Utilities Industry according to the Global Industry Classification Standard. It includes both MLPs and publicly traded limited liability companies which have a similar legal structure to MLPs and share the same tax benefits as MLPs. The Index is calculated, maintained and published by S&P Dow Jones Indices LLC. The composition of the Index is rebalanced annually after the market close of the third Friday of October.

To qualify for membership in the Index, a stock must satisfy the following criteria: (i) Be a publicly traded partnership with either a master limited partnership or a limited liability company structure; (ii) be listed on the NYSE (including NYSE Arca), the NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Select Market or the NASDAQ Capital Market; and (iii) belong to the GICS Energy Sector (GICS Code 10) or Gas Utilities Industry (GICS Code 551020).

At each annual rebalancing, a company in the qualifying universe is added to the Index if it meets the following requirements: (i) Float-adjusted market capitalization of at least US \$300 million as of the rebalancing reference date; and (ii) average daily value traded above US \$2 million for the three months prior to the rebalancing reference date. No additions are made to the Index between rebalancing.

The Index methodology employs a modified market capitalization-weighting scheme, using the divisor methodology used in most S&P Dow Jones equity indices. At each annual rebalancing, no stock can have a weight of more than 15% in the Index and all stocks with a weight greater than 4.5%, based on float-adjusted market capitalization, are not allowed, as a group, to exceed 45% of the Index.

#### Availability of Information

The website for the Notes, [www.ipathetn.com](http://www.ipathetn.com), is publicly available and includes a form of the prospectus for the Notes that may be downloaded. Daily trading volume information for the Notes will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. The website and information will be publicly available at no charge. The value, components, and percentage weightings of the Index will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing the Index are available on the Index Provider's website, <http://us.spindices.com/>. Quotation and last sale information for the Notes will be available via the Consolidated Tape Association ("CTA") high speed line. The Index value, calculated and disseminated at least every 15-seconds, as well as the components of the Index and their percentage weighting, will be available from major market data vendors.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Notes. The Exchange will halt trading in the Notes under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Notes inadvisable. These may include: (1) The extent to which trading is not occurring in the securities composing the Index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

#### Trading Rules

The Exchange deems the Notes to be equity securities, thus rendering trading in the Notes subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Notes from 8:00 a.m. until 5:00 p.m. Eastern time and has the appropriate rules to facilitate transactions in the Notes during all trading sessions. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is

<sup>10</sup> Rule 14.11(d)(2)(K)(i)(b)(1)(A) (the "Continued Listing Rule") is substantively identical to the initial listing requirements under Rule 14.11(d)(2)(K)(i)(a)(2)(C) (the "Initial Listing Rule") except that the Continued Listing Rule provides that the concentration requirements need only be satisfied at the time an index is rebalanced.

<sup>11</sup> As further described below, the Index methodology provides that at each annual rebalancing, no stock can have a weight of more than 15% in the Index and all stocks with a weight greater than 4.5%, based on float-adjusted market capitalization, are not allowed, as a group, to exceed 45% of the Index. As such, the Index methodology will definitively prevent the Index from exceeding the concentration limitations in the Continued Listing Rule upon rebalance.

\$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

#### Information Circular

Prior to the commencement of listing on the Exchange, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Notes. Such Information Circular will include information related to: (a) The special risks of trading the Notes; (b) the Exchange Rules that will apply to the Notes, including Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) information about the dissemination of the value of the Index; and (d) the risks involved in trading the Shares during the Pre-Opening<sup>12</sup> and After Hours Trading Sessions<sup>13</sup> when the value of the Index will not be calculated or publicly disseminated.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Notes on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Notes through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Linked Securities. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Notes to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Notes are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures for the Notes under Exchange Rule 14.12. The Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Notes and the Index Constituents with other markets or other entities that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement, and may obtain trading

information regarding trading in the Notes from such markets or entities.<sup>14</sup> The Exchange prohibits the distribution of material non-public information by its employees. The Index Provider is not a registered broker-dealer and is not affiliated with a broker-dealer. In the event that the Index Provider becomes a broker-dealer or becomes affiliated with a broker-dealer, the Index Provider will implement and maintain a fire wall with respect to its relevant personnel regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Provider has implemented and will maintain procedures around the relevant personnel that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>15</sup> in general and Section 6(b)(5) of the Act<sup>16</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Specifically, the Exchange believes that the proposal is consistent with the Act because of the near-miss nature of the Index exceeding the concentration limitation in the Initial Listing Rule by less than 3% and the Notes will meet the continued listing standards applicable to Equity Index-Linked Securities under Rule 14.11(d)(2)(K)(i)(b)(1)(A) on a continuous basis. The Exchange points out that the Notes will meet the continued listing standards at all times that they are listed on the Exchange and the period of non-compliance will be a relatively short time—the Index will meet the initial listing standards upon rebalance in October 2019. As such, the Exchange believes that this proposal is consistent with the Act and raises no substantive issues for the Commission to consider.

Further, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Notes on the Exchange during all

trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Notes through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Linked Securities. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Notes to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Notes are not in compliance with the continued listing requirements, the Exchange will commence delisting procedures for the Notes under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under the regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Notes and the Index Constituents with other markets or other entities that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement, and may obtain trading information regarding trading in the Notes from such markets or entities. The Exchange prohibits the distribution of material non-public information by its employees. The Index Provider is not a registered broker-dealer and is not affiliated with a broker-dealer. In the event that the Index Provider becomes a broker-dealer or becomes affiliated with a broker-dealer, the Index Provider will implement and maintain a fire wall with respect to its relevant personnel regarding access to information concerning the composition and/or changes to the Index. In addition, the Index Provider has implemented and will maintain procedures around the relevant personnel that are designed to prevent the use and dissemination of material, non-public information regarding the Index. The Index value, calculated and disseminated at least every 15-seconds, as well as the components of the Index and their percentage weighting, will be available from major market data vendors.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest. In addition, a large amount of information is publicly available regarding the Notes, thereby promoting market transparency. Information regarding market price and

<sup>12</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>13</sup> The After Hours Trading Session is from 4:00 p.m. to 8:00 p.m. Eastern Time.

<sup>14</sup> The Exchange notes that all Index Constituents are required to be listed on a U.S. national securities exchange.

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 15 U.S.C. 78f(b)(5).

trading volume of the Notes will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Notes will include the prospectus and additional relevant data. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Notes. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Notes inadvisable. If the Index value is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Index value occurs. If the interruption to the dissemination of the Index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in the Notes will be halted if the circuit breaker parameters in BZX Rule 11.18 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Notes inadvisable. In addition, investors will have ready access to information regarding Index, quotation, and last sale information for the Notes.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the transfer of the listing of an exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Notes and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

#### *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 purpose of the Act. The Exchange notes that the proposed rule change, rather, will facilitate the transfer from Arca and listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (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<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)<sup>20</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the Notes are currently listed on Arca and are trading on the Exchange pursuant to unlisted trading privileges, and the Exchange asserts that waiver of the operative delay would permit the Notes to list and continue to trade on the Exchange without undue delay. The Exchange further represents (1) that, while the Notes do not currently satisfy the relevant concentration limit in the Exchange's Initial Listing Rule, the underlying Index currently exceeds that limit by less than three percentage points;<sup>21</sup> (2) that, upon rebalancing in October 2019, the Index will meet the relevant concentration limit in the Initial Listing Rule;<sup>22</sup> and (3) that the Notes would currently meet the Exchange's applicable continued listing standards and would, upon listing, do so on a continuous basis. The Commission

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> See *supra* note 10 and accompanying text.

<sup>22</sup> See *supra* note 11 and accompanying text.

believes that, under these circumstances, waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. For these reasons, the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>23</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-032 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CboeBZX-2019-032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

<sup>23</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-032 and should be submitted on or before May 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2019-09373 Filed 5-7-19; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85764; File No. SR-FINRA-2019-015]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update the FINRA Manual To Reflect FINRA's New Subsidiary, FINRA CAT, LLC

May 2, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 24, 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 concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> 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 update the FINRA Manual to reflect FINRA's new subsidiary, FINRA CAT, LLC. Specifically, the proposed rule change would codify the delegation of specific responsibilities and functions to FINRA CAT, LLC under the Plan of Allocation and Delegation of Functions by FINRA ("Delegation Plan"); make conforming amendments to the Delegation Plan to reflect FINRA CAT, LLC; amend the By-Laws of FINRA Regulation, Inc. ("FINRA Regulation By-Laws") to make relevant conforming amendments; and make conforming amendments to FINRA rules.

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

###### Background

FINRA and the national securities exchanges (collectively, the "Participants")<sup>5</sup> filed with the Commission, pursuant to Section 11A of

the Exchange Act<sup>6</sup> and Rule 608 of Regulation NMS thereunder,<sup>7</sup> the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan").<sup>8</sup> The Participants filed the Plan to comply with Rule 613 of Regulation NMS under the Exchange Act.<sup>9</sup> The Plan was published for comment in the **Federal Register** on May 17, 2016,<sup>10</sup> and approved by the Commission, as modified, on November 15, 2016.<sup>11</sup>

The Participants jointly own and operate CAT NMS, LLC, a company formed by the Participants to arrange for and oversee the creation, implementation, and maintenance of the consolidated audit trail ("CAT") as required under Rule 613, and the CAT is a facility of each Participant.<sup>12</sup> The CAT is intended to capture in a single consolidated data source customer and order event information for orders in NMS Securities and OTC Equity Securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution.<sup>13</sup>

The Plan requires the Participants to select a Plan Processor to perform the CAT processing functions required by SEC Rule 613 and as set forth in the Plan.<sup>14</sup> On February 1, 2019, CAT NMS, LLC confirmed that it would be transitioning the CAT project to a new Plan Processor, and on February 27, 2019, announced that it had selected FINRA as the Plan Processor.<sup>15</sup> In its capacity as Plan Processor, FINRA is responsible for the development and

<sup>6</sup> 15 U.S.C. 78k-1.

<sup>7</sup> 17 CFR 242.608.

<sup>8</sup> See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014; and Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. On December 23, 2015, the Participants submitted an amendment to the CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015.

Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth herein or in the CAT NMS Plan.

<sup>9</sup> 17 CFR 242.613.

<sup>10</sup> See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30614 (May 17, 2016).

<sup>11</sup> See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016) ("Approval Order").

<sup>12</sup> See Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722, 45775 (August 1, 2012) ("Rule 613 Adopting Release").

<sup>13</sup> See e.g., *id.*, at 45722.

<sup>14</sup> However, while the Participants select a Plan Processor to perform these functions, each Participant also remains responsible for compliance with the terms of the Plan. See SEC Rule 608(c) and SEC Rule 613(h).

<sup>15</sup> See announcements dated February 1, 2019 and February 27, 2019 on the News Page at [www.catnmsplan.com/news-page/index.html](http://www.catnmsplan.com/news-page/index.html).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> Specifically, the Participants are BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., FINRA, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National, Inc.

operation of the CAT in accordance with the terms of the Plan.

In addition to serving in its capacity as Plan Processor of the CAT, FINRA is required to fulfill its obligations as a Participant of the Plan. To that end, FINRA CAT, LLC will further FINRA's compliance with its regulatory obligations under SEC Rule 613 with respect to the creation, operation and maintenance of a central repository. FINRA will fulfill its obligations as a Participant of the Plan, including among others, enforcing FINRA rules requiring its members to comply with the CAT NMS Plan, through FINRA (and FINRA Regulation, Inc.) and not through FINRA CAT, LLC.

FINRA believes that significant resources are required in order to meet its obligations as Plan Processor of the CAT. For example, FINRA has dedicated staff and financial resources in connection with serving as the Plan Processor and believes that it will be required to continue to allot resources to the CAT in this capacity. In addition, certain functions of the Plan Processor require consultation with or are subject to approval by the CAT NMS Plan Operating Committee. FINRA created FINRA CAT, LLC as a subsidiary of FINRA in order to dedicate resources solely to carrying out its obligations as Plan Processor and to underscore that FINRA CAT, LLC, while part of the self-regulatory organization ("SRO"), is separate and distinct from the other FINRA entities.

FINRA notes that as a subsidiary of FINRA, FINRA CAT, LLC is part of the registered securities association. As such, for purposes of SEC Regulation Systems Compliance and Integrity ("Regulation SCI"), FINRA CAT, LLC is an SCI SRO and therefore an SCI entity.<sup>16</sup>

#### Proposed Amendments

To account for the new subsidiary and codify the delegation by FINRA of certain regulatory responsibilities and functions to it, FINRA is proposing to make conforming amendments to the Delegation Plan to include FINRA CAT, LLC in the Delegation Plan; amend FINRA Regulation By-Laws to make relevant conforming amendments; and

<sup>16</sup> 17 CFR 242.1000 through 242.1007. Under Regulation SCI, the term "SCI entity" means an SCI self-regulatory organization, SCI alternative trading system, plan processor, or exempt clearing agency subject to ARP. The term "SCI self-regulatory organization" or "SCI SRO" includes national securities exchanges registered under Section 6(b) of the Exchange Act, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board. 17 CFR 242.1000.

make conforming amendments to FINRA rules.

#### (1) Conforming Amendments to the Delegation Plan

FINRA is proposing to rename the Delegation Plan as the "Plan of Allocation and Delegation of Functions by FINRA to Subsidiaries." FINRA also is proposing to make conforming amendments throughout the Delegation Plan to replace references to "FINRA Regulation" with references to "the Subsidiaries" or "Subsidiary" to indicate that both FINRA Regulation, Inc. and FINRA CAT, LLC are subsidiaries of FINRA. In addition, the proposed rule change would reference FINRA Regulation, Inc. and FINRA CAT, LLC individually and define them collectively as "the Subsidiaries." Finally, FINRA is proposing to amend Section I.B of the Delegation Plan to include a reference to new Section III pertaining to FINRA CAT, LLC.

#### Section I—FINRA, Inc.

Section I of the Delegation Plan provides that FINRA shall have responsibility for the rules and regulations of the Association (defined in the FINRA Manual as FINRA and its Subsidiaries) and its operation and administration. Under Section I.B, the proposed rule change would include subsection 10 to provide that FINRA expressly retains authority and functions to resolve any disputes among the Subsidiaries. This subsection was included in the Delegation Plan prior to the merger of FINRA Dispute Regulation, Inc. into and with FINRA Regulation, Inc.,<sup>17</sup> but was removed as it refers to disputes among the subsidiaries, and only FINRA Regulation, Inc. remained as a result of the merger of the two subsidiaries. In addition, in subsection three, FINRA proposes to add reference to selection of a Board of Managers, because FINRA CAT, LLC is governed by a Board of Managers. In subsection five, FINRA proposes to add the word "common" as FINRA Regulation, Inc. may now share overhead (including, for example, such back-office services as payroll and human resources) and technology with FINRA CAT, LLC as separate subsidiaries. Finally, FINRA is proposing to amend subsection nine to provide for delegation to FINRA CAT, LLC, which, as discussed below, would be located in Section III of the Delegation Plan.

<sup>17</sup> See Securities Exchange Act Release No. 76670 (December 16, 2015) 80 FR 79632 (December 22, 2015) (Order Approving File No. SR-FINRA-2015-034).

FINRA is proposing to expressly provide in amended Section I.E of the Delegation Plan that, notwithstanding the delegation of authority to FINRA CAT, LLC, the staff, books, records, and premises of FINRA CAT, LLC are the staff, books, records, and premises of FINRA subject to oversight pursuant to the Act, and all officers, directors, employees, and agents of FINRA CAT, LLC are officers, directors, employees, and agents of FINRA for purposes of the Act, subject to applicable provisions of the CAT NMS Plan.<sup>18</sup> For example, the CAT NMS Plan expressly provides that the Plan Processor shall designate employees of the Plan Processor to serve, subject to the approval of the CAT NMS Plan Operating Committee, as the Chief Compliance Officer ("CCO") and as the Chief Information Security Officer ("CISO"),<sup>19</sup> and that the CCO and CISO shall be officers of CAT NMS, LLC.<sup>20</sup> The Plan further requires the Plan Processor to acknowledge that the officers of CAT NMS, LLC owe fiduciary duties to CAT NMS, LLC, and that, to the extent that the duties owed to CAT NMS, LLC conflict with any duties owed to the Plan Processor, the duties to CAT NMS, LLC will control.<sup>21</sup> In addition, the Plan provides that all CAT Data and other books and records of CAT NMS, LLC shall be the property of CAT NMS, LLC, rather than the Plan Processor, and, to the extent in the possession or control of the Plan Processor, shall be made available by the Plan Processor to the Commission upon request.<sup>22</sup> The proposed rule change would not modify such provisions of the CAT NMS Plan.<sup>23</sup>

#### Section III—FINRA CAT, LLC

FINRA is proposing to amend the Delegation Plan to include Section III of the Delegation Plan to delegate responsibilities and functions to FINRA CAT, LLC. Specifically, FINRA is proposing to delegate to FINRA CAT, LLC the following responsibilities and functions: (1) To act as a Plan Processor under the CAT NMS Plan in accordance with SEC Rule 613 and the provisions

<sup>18</sup> Thus, the books and records and management and staff of FINRA CAT, LLC are deemed to be the books and records and management and staff of FINRA for purposes of the jurisdiction and oversight by the SEC of FINRA CAT, LLC as part of the registered securities association. Notwithstanding this provision, FINRA and FINRA CAT, LLC are separate legal entities under Delaware corporate law.

<sup>19</sup> See Section 6.2 of the CAT NMS Plan.

<sup>20</sup> See Section 4.6 of the CAT NMS Plan.

<sup>21</sup> *Id.*

<sup>22</sup> See Section 9.1 of the CAT NMS Plan.

<sup>23</sup> FINRA is proposing a conforming amendment to FINRA Rule 0170 (Delegation, Authority and Access).

of the Plan; (2) to create, operate and maintain the CAT and central repository pursuant to Rule 613 and the provisions of the Plan; (3) to develop and implement policies, procedures, and control structures related to the CAT System; (4) to ensure the effective management and operation of the CAT; and (5) to ensure the accuracy of the consolidation of the CAT Data reported to the Central Repository.

FINRA also proposes to provide that the responsibilities and functions delegated by FINRA to FINRA CAT, LLC in Section III include, but are not limited to, those specified above. FINRA notes that the specific responsibilities and functions of the Plan Processor are set forth in Section 6.1 of the CAT NMS Plan, many of which require consultation with or approval by the CAT NMS Plan Operating Committee. As such, FINRA is proposing to expressly provide that all action taken by FINRA CAT, LLC pursuant to authority delegated pursuant to the Delegation Plan shall be taken in accordance with the terms of the Plan and SEC Rule 613, and in consultation with the CAT NMS Plan Operating Committee, as applicable.

Finally, FINRA is proposing to include language providing that capitalized terms that are not defined in Section III shall have the meanings ascribed to them in the Plan.

#### (2) Conforming Amendments to the FINRA Regulation By-Laws

FINRA is proposing to make conforming amendments to the FINRA Regulation By-Laws. Specifically, FINRA is proposing to amend the definition of “Delegation Plan” in section (i) of Article I to replace “FINRA Regulation” with “Subsidiaries” to account for the fact that pursuant to the proposed rule change, the Delegation Plan also would pertain to FINRA CAT, LLC. In addition, FINRA is proposing to include reference to FINRA CAT, LLC in the last sentence of Section 4.14(b) (Conflicts of Interest; Contracts and Transactions Involving Directors) to indicate that the provisions in that subsection shall not apply to contracts or transactions between FINRA Regulation, Inc. and FINRA CAT, LLC.

#### (3) Conforming Amendments to FINRA Rules

FINRA also is proposing to amend several FINRA rules to reflect FINRA CAT, LLC as a FINRA subsidiary. The proposed rule change would amend Rule 0160 (Definitions) to include FINRA CAT, LLC in the definition of FINRA. In addition, FINRA is proposing a conforming amendment to Rule 0170

(Delegation, Authority and Access) to replace references to “FINRA Regulation” with the “Subsidiaries.”

FINRA notes that the proposed rule change would not amend the Rule 6800 Series (Consolidated Audit Trail Compliance Rule), pursuant to which FINRA requires its members to comply with the provisions of the CAT NMS Plan. FINRA is not delegating any of its responsibilities or functions pertaining to the Rule 6800 Series to FINRA CAT, LLC.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date will be the date of filing.

#### 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>24</sup> 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 amendments to include its subsidiary, FINRA CAT, LLC, in the FINRA Manual would reflect and bring transparency to FINRA’s corporate organizational structure, and, in the process, would make the organization more efficient. In addition, FINRA believes that delegating regulatory responsibilities and functions to FINRA CAT, LLC to meet its CAT-related obligations enables FINRA to efficiently direct resources to ensure that it properly carries out its contractual obligations in its capacity as Plan Processor and its regulatory obligations under SEC Rule 613.

FINRA notes that the proposed rule change would not affect public investors, the goals of the Plan or fees associated with the CAT. FINRA believes that the proposed rule change reflects its commitment to serve as Plan Processor of the CAT and to comply with the provisions of the Plan. Thus, FINRA believes that the creation of FINRA CAT, LLC and inclusion of FINRA CAT, LLC in the FINRA Manual would ensure that FINRA continues to protect investors and the public interest in an efficient manner.

#### 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 amendments

account for FINRA’s subsidiary, FINRA CAT, LLC, and would align FINRA’s corporate organizational structure with its organizational practice. The proposed rule change would allow FINRA to update its Manual to include FINRA CAT, LLC and make changes to its Manual to reflect the current corporate structure. Further, FINRA intends to allocate staff and financial resources directly to FINRA CAT, LLC to meet its obligations as Plan Processor. FINRA notes that the proposed rule change would not alter member and industry obligations related to the Plan, including regarding fees. FINRA believes that the proposed rule change demonstrates its commitment to fulfilling its contractual obligations in its capacity as Plan Processor and its regulatory obligations under SEC Rule 613.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>25</sup> and paragraph (f)(3) of Rule 19b-4 thereunder.<sup>26</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2019-015 on the subject line.

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f)(3).

<sup>24</sup> 15 U.S.C. 78o-3(b)(6).

*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-2019-015. 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 a.m. and 3 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-2019-015 and should be submitted on or before May 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-09375 Filed 5-7-19; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85761; File No. SR-Phlx-2019-18]

**Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete and Relocate the Exchange's Current Registration, Qualification and Continuing Education Rules**

May 2, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 30, 2019, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to delete and relocate the Exchange's current Registration, Qualification and Continuing Education rules ("Exchange Registration Rules" and, generally, "Registration Rules") under the 1200 Series (Rules 1210 through 1260), and incorporate by reference The Nasdaq Stock Market LLC's ("Nasdaq") rules at General 4 ("Nasdaq Registration Rules"), into General 4 of the Exchange's rulebook's ("Rulebook") shell structure.<sup>3</sup>

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In 2017, the Exchange added a shell structure to its Rulebook with the purpose of improving efficiency and readability and to align its rules closer to those of its five sister exchanges, The Nasdaq Stock Market LLC; Nasdaq BX, Inc.; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC ("Affiliated Exchanges"). The shell structure currently contains eight (8) General sections which, once complete, will apply a common set of rules to the Affiliated Exchanges. See Securities Exchange Act Release No. 82169 (November 29, 2017), 82 FR 57508 (December 5, 2017) (SR-Phlx-2017-97).

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange recently amended, reorganized, and enhanced certain of its membership, registration, and qualification requirement rules partly in response to rule changes by the Financial Industry Regulatory Authority ("FINRA"), and also in order to conform the Exchange's rules more closely to those of its Affiliated Exchanges in the interest of uniformity and to facilitate compliance with membership, registration and qualification regulatory requirements by members of multiple Affiliated Exchanges including the Exchange.<sup>4</sup> To that end, the Exchange adopted a new 1200 Series of rules, captioned "Registration, Qualification and Continuing Education," generally conforming the Exchange Registration Rules to FINRA's new 1200 Series, except for a number of Exchange-specific variations.<sup>5</sup>

The Exchange now proposes to delete the Exchange Registration Rules 1210, 1220, 1230, 1240, and 1250, currently under the 1200 Series; and incorporate by reference the Nasdaq Registration Rules at General 4 of Nasdaq's rulebook into General 4 of the Exchange's Rulebook. Relatedly, the Exchange will make necessary cross-reference updates throughout the Rulebook. Specifically, the Exchange will amend the cross-references in Exchange Rules 1, 3202, 9630, the Pricing Schedule at Options 7, Section 9, C and the Options Floor Trading Rules at Options 8, Sections 8 and 12.

The incorporation by reference of Nasdaq Registration Rules at General 4 into the Exchange's General 4 title and

<sup>4</sup> See Securities Exchange Act Release No. 84352 (October 3, 2018), 83 FR 50981 (October 10, 2018) (SR-Phlx-2018-61) (the "Registration Rules Filing").

<sup>5</sup> *Id.*

<sup>27</sup> 17 CFR 200.30-3(a)(12).

any necessary cross-reference updates are regulatory in nature.<sup>6</sup> In addition, consistent with the Registration Rules Filing,<sup>7</sup> the incorporation by reference text in the Exchange's General 4, Section 1 will provide that all references in the Exchange's General 4 series to a "member" shall be deemed to be references to a "member organization." Furthermore, the incorporation by reference text in the Exchange's General 4, Section 1 will clarify that the term "registered persons," as described in Nasdaq Registration Rules General 4, Section 1.1210.07, shall be read to refer to "covered persons" as defined in Nasdaq Registration Rules General 4, Section 1.1240(a)(5).

The Exchange notes that as a condition of an exemption, which the Exchange will request and will need to be approved by the Commission pursuant to Section 36 of the Act,<sup>8</sup> the Exchange agrees to provide written notice to its members whenever Nasdaq proposes a change to its General 4 title.<sup>9</sup> Such notice will alert Exchange members to the proposed Nasdaq rule change and give them an opportunity to comment on the proposal. The Exchange will similarly inform its members in writing when the SEC approves any such proposed change.

#### Implementation

The Exchange proposes that this rule change becomes operative at such time as it receives approval for an exemption from the Securities and Exchange Commission, pursuant to its authority under Section 36 of the Act and Rule 0-12<sup>10</sup> thereunder, from the Section 19(b) rule filing requirements to separately file a proposed rule change to amend the Exchange's General 4 title.

<sup>6</sup> The General 4 rules are categories of rules that are not trading rules. See 17 CFR 200.30-3(a)(76) (contemplating such requests). In addition, several other Self-Regulatory Organizations ("SROs") incorporate by reference certain regulatory rules of other SROs and have received from the Commission similar exemptions from Section 19(b) of the Exchange Act. See e.g., Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008), 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006); 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004).

<sup>7</sup> See supra note 4.

<sup>8</sup> 15 U.S.C. 78mm.

<sup>9</sup> The Exchange will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b-4 within the timeframe required by such rule. The website posting will include a link to the location on the Nasdaq website where the applicable proposed rule change is posted.

<sup>10</sup> See 17 CFR 240.0-12; Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998).

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by consolidating its rules into a single rule set. The Exchange intends to also file similar proposed rule changes for the Nasdaq BX, Inc.; Nasdaq GEMX, LLC; Nasdaq ISE, LLC; and Nasdaq MRX, LLC markets so that the General 4 rules which govern Registration Rules are conformed.<sup>13</sup>

Incorporating by reference the Nasdaq Registration Rules at General 4 into the Exchange's General 4 title will provide an easy reference for Exchange members seeking to comply with registration and qualification requirements on multiple markets. As noted, the Exchange intends to file similar proposed rule changes for other Affiliated Exchanges so that Nasdaq General 4 is the source document for all Registration Rules. The Exchange notes that the current rule is not changing and that Exchange members will be required to continue to comply with the Nasdaq Registration Rules as though such rules are fully set forth in Exchange's Rulebook. The Exchange desires to conform its rules and locate those rules within the same location in each Rulebook to provide Exchange members the ability to quickly locate rules.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that this rule change does not impose an undue burden on competition because the Exchange is merely incorporating by reference the Nasdaq Registration Rules at General 4 into its own Rulebook. The Exchange Registration Rules are not being amended and therefore no member is impacted.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> The Commission notes that the exchanges have filed these rule changes.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2019-18 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-Phlx-2019-18. This file

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2019-18 and should be submitted on or before May 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-09374 Filed 5-7-19; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-85763; File No. SR-LCH SA-2019-002]

**Self-Regulatory Organizations; LCH SA; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Onboarding Fee Waiver and Introduction of a Fee Rebate Scheme for CDSClear Index Swaptions Clearing Activities**

May 2, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 29, 2019, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by LCH SA. LCH SA filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(2)<sup>4</sup> thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice**

The proposed rule change will extend the onboarding fee waiver and introduce a fee rebate scheme for CDSClear Index Swaptions clearing activities to be effective upon filing with the Commission.

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, LCH SA 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. LCH SA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice*

**1. Purpose**

As specified in the table below, the current CDSClear Index Swaptions fee grid includes an onboarding fee and offers both General Members and Select Members a choice between the Introductory Tariff and the Unlimited Tariff.

The purpose of the proposed rule change is to:

- (1) Extend the waiver period for the onboarding fee for both General Members and Select Members that register to the CDSClear Index Swaptions clearing service, and
- (2) introduce a clearing fee rebate applicable to the Index Swaptions Unlimited Tariff for both General Members and Select Members.

As a reminder, under the Unlimited Tariff, Clearing Members pay a fixed amount annually that covers all clearing fees for their Index Swaptions House activity for the activity of all the Affiliates of their Clearing Member group.

**CURRENT LCH SA CDSCLEAR INDEX SWAPTIONS CLEARING SERVICE FEE GRID**

**General Member:**

*Introductory Tariff*

Cover only one Clearing Member legal entity (no Affiliate coverage)

Clearing fees .....	\$15 €15	per million of Index Swaptions notional on U.S. Indices.* per million of Index Swaptions notional on European Indices.
Floor on clearing fees .....	€150k	Per calendar year (no pro-rating).
Cap on clearing fees .....	€600k	Per calendar year (no pro-rating).

*Unlimited Tariff*

Cover all the Affiliates of a given Clearing Member group.

Cover all clearing fees for Index Swaptions House activity for both iTraxx and CDX.NA underlying index families.

Fixed fee (annual) .....	€375k €30k	Per calendar year (no pro-rating). One-off fee per Clearing Member legal entity under the Introductory Tariff or per Clearing Member group under the Unlimited Tariff waived until 31-Mar-19.
<i>Onboarding Fees</i> (both Introductory Tariff & Unlimited Tariff).		

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

## CURRENT LCH SA CDS CLEAR INDEX SWAPTIONS CLEARING SERVICE FEE GRID—Continued

Select Member:		
<i>Introductory Tariff</i>		
Cover only one Clearing Member legal entity (no Affiliate coverage)		
Clearing fees .....	\$18 €18	per million of Index Swaptions notional on U.S. Indices.*
Cap on Clearing fees .....	€600k	per million of Index Swaptions notional on European Indices. Per calendar year (no pro-rating).
<i>Unlimited Tariff</i>		
Cover all Affiliates of a given Clearing Member group. Cover all clearing fees for Index Swaptions House activity for both iTraxx and CDX.NA underlying index families.		
Fixed fee (annual) .....	€400k	Per calendar year (no pro-rating).
<i>Onboarding Fees</i> (both Introductory Tariff & Unlimited Tariff) .....	€30k	One-off fee per Clearing Member legal entity under the <i>Introductory Tariff</i> or per Clearing Member group under the <i>Unlimited Tariff</i> waived until 31-Mar-19.
Client:		
Clearing fees .....	\$20 €20	per million of Index Swaptions notional on U.S. Indices. per million of Index Swaptions notional on European Indices.

In order to incentivize the Clearing Members to build liquidity in the CDS Clear Index Swaptions clearing service, LCH SA has decided to make the following changes to its Index Swaptions fee grid:

(1) Extend the waiver period for the onboarding fee from 31 March 2019 to 20 December 2019 for both General Members and Select Members that

register to the CDS Clear Index Swaptions clearing service, and (2) implement a fee rebate scheme, applicable to the Unlimited Tariff for both General Members and Select Members, in which discounts to the fixed fee will apply depending on the Index Swaptions notional cleared by each Clearing Member group as detailed hereinafter.

The fee rebate scheme will be valid for 2019 only and apply equally to all

Clearing Members that register to the CDS Clear Index Swaptions clearing service.

In order to determine the relevant discount rate to apply, LCH SA will consider the total Index Swaptions notional cleared in 2019 starting from the date on which the fee rebate is deemed effective in accordance with any relevant regulatory review and approval process.

## REVISED LCH SA CDS CLEAR INDEX SWAPTIONS CLEARING SERVICE FEE GRID

## Index Swaptions clearing service fee rebate scheme \*

General Member:		
<i>Unlimited Tariff</i>		
Fixed fee (annual) .....	€375k	Per calendar year.
Discounted Rates .....	€50k	After discount rate of 86.67% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €12 billion.
	€75k	After discount rate of 80.00% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €6 billion but equal or below €12 billion.
	€125k	After discount rate of 67.00% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €0 but equal or below €6 billion.
Select Member:		
<i>Unlimited Tariff</i>		
Fixed fee (annual) .....	€400k	Per calendar year.
Discounted Rates .....	€50k	After discount rate of 87.50% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €12 billion.
	€75k	After discount rate of 81.25% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group strictly above €6 billion but equal or below €12 billion.
	€125k	After discount rate of 68.75% applied to the Fixed fee amount if Index Swaptions notional cleared per Clearing Member group per year strictly above €0 but equal or below €6 billion.

Cumulative conditions for the Fee rebate:

- (i) application to the Unlimited Tariff only;
- (ii) application to all Clearing Members registering to the Index Swaptions clearing service (registration letter or application file signature date);
- (iii) Valid for 2019 only; and

## REVISED LCH SA CDS CLEAR INDEX SWAPTIONS CLEARING SERVICE FEE GRID—Continued

(iv) Index Swaptions notional cleared for the determination of the discount rate to be observed from the regulatory effective date of the rebate.

Onboarding fee (for both General Members and Select Members).	€30k	One-off fee per Clearing Member group waived until 20 December 2019 under the Unlimited Tariff.
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\* Subject to regulatory review/approval process.

## 2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges.<sup>5</sup>

LCH SA has determined that the proposed fees are reasonable and appropriate to offer and grow CDS Clear Index Swaptions clearing services.

Regarding the CDClear Index Swaptions service, LCH SA has already rule filed with the SEC the relevant fee grid and believes that the proposed discounts for CDS Clear Index Swaptions clearing activities have been set up at an appropriate level given the costs, expenses and revenues to be generated to LCH SA in providing such services.

All clearing members will have the same opportunity to equally benefit from the proposed incentive rebate according to the specified conditions.

LCH SA believes that proposing such clearing fees and rebate are consistent with the requirements of Section 17A of the Act<sup>6</sup> and the regulations thereunder applicable to it, and in particular provides for the equitable allocation of reasonable fees, dues, and other charges among Clearing Members and market participants by ensuring that Clearing Members pay reasonable fees and dues for the services provided by LCH SA, within the meaning of Section 17A(b)(3)(D) of the Act.

### B. Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>7</sup> LCH SA does not believe that the proposed rule change would impose any burden on competition.

As noted above, LCH SA believes that the fees amount and related discounts have been set up at an appropriate level given the costs and expenses to LCH SA in offering and maintaining the relevant CDS Clear Index Swaptions clearing services.

Additionally, the fee waiver and rebate will apply equally to all CDS Clear Clearing Members and their Affiliates.

Further, LCH SA does not believe that the proposed rule change would have a burden on competition because it does not adversely affect the ability of such Clearing Members or other market participants generally to engage in cleared transactions or to access clearing services as the clearing of Index Swaptions remains not mandatory.

### C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. LCH SA will notify the Commission of any written comments received by LCH SA.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)<sup>8</sup> of the Act and Rule 19b-4(f)(2)<sup>9</sup> thereunder because it establishes a fee or other charge imposed by LCH SA on its Clearing Members. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-LCH SA-2019-002 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-LCH SA-2019-002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of LCH SA and on LCH SA's website at <https://www.lch.com/resources/rules-and-regulations/proposed-rule-changes-0>. 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-LCH SA-2019-002 and should be submitted on or before May 29, 2019.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(I).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-09372 Filed 5-7-19; 8:45 am]

BILLING CODE 8011-01-P

## DEPARTMENT OF STATE

[Public Notice 10749]

### 30-Day Notice of Proposed Information Collection: Complaint of Discrimination

**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 June 7, 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](mailto: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. You must include the information collection title (Request for Commodity Jurisdiction Determination), form number (DS-4282), and the OMB control number (1405-0220) in all 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, who may be reached at [kottmyeram@state.gov](mailto:kottmyeram@state.gov), 202-647-2318.

#### 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:* Revision 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://efrms.state.gov/Forms/ds4282.PDF>. After completion, the form may be submitted by email, mail, fax, or hand-delivery.

Dated: April 26, 2019.

**Gregory B. Smith,**

*Director.*

[FR Doc. 2019-09462 Filed 5-7-19; 8:45 am]

BILLING CODE 4710-25-P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Limitation on Claims Against Proposed Public Transportation Projects

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in Spokane, Washington, and Portland and Gresham, Oregon. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

**DATES:** By this notice, FTA is advising the public of final agency actions subject to 23 U.S.C. 139(l). A claim seeking judicial review of FTA actions announced herein for the listed public transportation projects will be barred unless the claim is filed on or before October 7, 2019.

**FOR FURTHER INFORMATION CONTACT:** Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353-2577 or Juliet Bochicchio, Environmental Protection Specialist, Office of Environmental Programs, (202) 366-9348. FTA is located at 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 9:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the projects to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA environmental project file for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information. Contact information for FTA's Regional Offices may be found at <https://www.fta.dot.gov>.

This notice applies to all FTA decisions on the listed projects as of the

issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) requirements [23 U.S.C. 138, 49 U.S.C. 303], Section 106 of the National Historic Preservation Act [54 U.S.C. 306108], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location*: Central City Line Project, Spokane, Washington. *Project Sponsor*: Spokane Transit Authority (STA). *Project description*: The project will provide a new 5.8-mile bus rapid transit system consisting of 34 stations that connect major destinations in Spokane, Washington, including the Central Business District, the University District, Gonzaga University, and Spokane Community College along with residential neighborhoods and will include the purchase of ten (10) new vehicles. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. *Final agency actions*: Section 4(f) exception and Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect concurrence dated July 9, 2018; and determination of the applicability of a Categorical Exclusion pursuant to 23 CFR 771.118(d), dated March 7, 2019. *Supporting documentation*: Documented Categorical Exclusion checklist and supporting materials, dated March 2019.

2. *Project name and location*: Division Transit Project, Portland and Gresham, Oregon. *Project sponsors*: Metro and TriMet. *Project description*: The project will provide approximately 15-mile of a new bus rapid transit route between downtown Portland and downtown Gresham. The project also includes 42 stations, articulated buses and station configurations, pedestrian improvements, bicycle access, and accessibility improvements, signal and safety improvements, and a new bus layover facility within the existing Cleveland Park-and-Ride Lot. This notice only applies to the discrete actions taken by FTA at this time, as described below. Nothing in this notice affects FTA's previous decisions, or notice thereof, for this project. *Final agency actions*: Section 4(f) exception and Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect concurrence dated February 22, 2019; and determination of the applicability of a Categorical Exclusion pursuant to 23 CFR

771.118(d), dated March 13, 2019.

*Supporting documentation*: Documented Categorical Exclusion checklist and supporting materials, dated March 2019.

**Dwayne E. Weeks,**

*Director, Office of Planning.*

[FR Doc. 2019–09399 Filed 5–7–19; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Competitive Funding Opportunity: Integrated Mobility Innovation (IMI) Demonstration Program

**AGENCY**: Federal Transit Administration (FTA), U.S. Department of Transportation (USDOT).

**ACTION**: Notice of funding opportunity.

*Funding opportunity Number* XXXXXXXXX; *Catalogue of Federal Domestic Assistance (CFDA) No.* 20.530

**SUMMARY**: The Federal Transit Administration's (FTA) Integrated Mobility Innovation (IMI) Demonstration program's primary purpose is to fund projects that demonstrate innovative, effective approaches, practices, partnerships, and technologies to enhance public transportation effectiveness, increase efficiency, expand quality, promote safety, and improve the traveler's experience. This notice announces the availability of up to \$15 million in Fiscal Year (FY) 2017 and FY 2018 FTA research funds in the form of cooperative agreements for eligible projects. FTA may award additional funds, if available.

This IMI Notice of Funding Opportunity (NOFO) brings together three distinct areas of inquiry: Mobility on Demand (MOD) Sandbox demonstrations; FTA's Strategic Transit Automation Research (STAR); and Mobility Payment Integration (MPI). These areas are integrated in this NOFO to allow applicants to comprehensively plan multiple areas of mobility research. FTA requests that all applicants identify the specific area(s) for which they are applying.

The Integrated Mobility Innovation Demonstration program will also leverage FTA's leadership of the Accessible Transportation Technologies Research Initiative (ATTRI) to ensure that all activities conducted under this NOFO advance the vision of a Complete Trip for All. The Complete Trip concept reflects the understanding that a person's travel comprises a chain of steps beginning with an often-

spontaneous decision to make a trip, through to planning an itinerary, traversing the built environment and its transportation networks (with or without a vehicle); navigating streets, intersections, facilities, stations, and stops to their destination—safely, efficiently, and carefree. The Complete Trip is the realization that if any part of the trip-making chain is broken, the trip cannot be completed, and an opportunity is lost.

**DATES**: Applications must be submitted by 11:59 p.m. Eastern Time August 6, 2019 through *Grants.gov*.

**FOR FURTHER INFORMATION**: Please send any questions regarding this notice to Mr. Hendrik Opstelten, Program Manager, Office of Research, Demonstration and Innovation, (202) 366–8094, or *hendrik.opstelten@dot.gov*. A Telecommunication Device for the Deaf (TDD) is available for individuals who are deaf or hard of hearing at 202–366–3993. In addition, FTA will post answers to questions and requests for clarifications as well as information about webinars FTA will host to provide further guidance at <https://www.transit.dot.gov/imi>

**SUPPLEMENTARY INFORMATION**: Each section of this notice contains information and instructions relevant to the application process for IMI Demonstration projects, and all applicants should read this notice in its entirety so that they have the information required to submit eligible and competitive applications.

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#### A. Program Description

FTA's Public Transportation Innovation program is authorized by Federal public transportation law at 49 U.S.C. 5312. Under this authority, FTA may make grants, or enter into contracts, cooperative agreements, and other agreements for research, development, demonstration, deployment, and evaluation projects of national significance to public transportation that the Secretary determines will improve public transportation. The Integrated Mobility Innovation (IMI) Demonstration program was developed under this authority.

The IMI Demonstration program and its constituent areas of inquiry advance the Secretary's strategic goal to lead the development and deployment of

innovative practices and technologies that improve the performance of the nation's transportation system and support economic growth. Further, this program follows FTA's vision of mobility for all—promoting equitable, accessible, and safe transportation for everyone. The program is built upon the opportunities offered by new mobility options that utilize public-private partnerships, various local assets, and innovative approaches to enhance personal mobility. These new models offer travelers more options, more information, and greater temporal and geographic coverage, thus increasing the vibrancy of all American communities.

The IMI Demonstration program's goals include:

- Exploring new business approaches and emerging technology solutions that support transformational mobility services;
- Enabling communities to adopt innovative mobility solutions that enhance transportation efficiency and effectiveness; and
- Facilitating the widespread deployment of proven mobility solutions that foster expanded personal mobility.

All applicants are expected to suggest performance measures in their applications to gauge the success of the proposed solutions within the above goals. Applicants are also required to note the data that will be provided to the Department to evaluate performance as well as provide an overview of how a public data access plan will be developed.

This NOFO announces the availability of \$15 million in Fiscal Year (FY) 2017 and 2018 FTA research funds. The \$15 million will fund solutions in one or more of the three areas: Mobility on Demand (MOD), Transit Automation, and Mobility Payment Integration. FTA may make multiple awards (*i.e.*, select multiple project teams) in each of these areas. Applicants should identify the area(s) in which they wish to have their proposal considered for funding. FTA reserves the right to ultimately determine which Area(s) of Inquiry apply to each proposal.

#### 1. MOD Sandbox Demonstration (\$8 Million)

FTA's Mobility on Demand (MOD) initiative envisions improved mobility through a traveler-centric approach that leverages innovations in technologies, service methods, and business models. FTA's MOD Sandbox Demonstrations provide a venue for integrated MOD concepts and solutions—supported through local partnerships—demonstrated in real-world settings.

In support of the Mobility on Demand vision, the Sandbox Demonstration program seeks to:

- Advance the transit industry's adoption of MOD;
- Enhance the transit industry's ability to formulate and implement MOD practices, with existing transit service as the backbone of an integrated mobility ecosystem;
- Validate the technical and institutional feasibility of innovative MOD business models and document best practices emerging from the demonstrations;
- Measure the impacts of MOD on travelers and transportation systems; and
- Examine requirements, regulations, and policies supporting the adoption of MOD.

The 2016 MOD Sandbox program (<https://www.transit.dot.gov/research-innovation/mobility-demand-mod-sandbox-program>) offered a platform where transit providers formed partnerships with innovative mobility providers, technology suppliers, and other partners to demonstrate innovative concepts and solutions to deliver high-quality, transformative mobility options in a real-world setting. The eleven demonstration projects and complementary independent evaluations in the 2016 MOD Sandbox program are helping FTA and related stakeholders learn how to approach MOD-related policies, and identify which technologies and business models hold promise. This NOFO solicits projects that build upon the existing knowledge base of the 2016 MOD Sandbox, and other demonstration and pilot projects, advancing the state of the practice and continuing to test MOD models across rural, suburban, and urban settings.

The state of practice for MOD has evolved since 2016. FTA is aware that a growing number of transit agencies and communities have partnered with private mobility providers to integrate new mobility options for transit users. Some agencies transformed their own operational and business practices to better meet passenger needs with new or enhanced services, such as new trip planning tools and applications; on-demand bus and microtransit operations; and other flexible service models.

The 2016 Sandbox projects are yielding valuable insights into how agencies can take advantage of new mobility options. These insights include the potential value for travelers, and some of the challenges or potential pitfalls in using these methods of service.

Some initial lessons learned include:

- Well-functioning first-mile/last-mile connections are essential to implementing effective MOD projects regardless of the MOD technology or business model demonstrated;
- Though MOD technologies and approaches can provide new and enhanced transportation options for all travelers and all communities, the benefits and impacts of new MOD service models may vary across different communities;
- Access to data and information on demonstration projects is essential to understanding the impacts of MOD, validating new MOD-focused metrics, and enabling transit agencies to make effective operational decisions. However, potential hurdles exist to accessing MOD pilot project data, including privacy concerns, the protection of proprietary business information, and data accuracy issues;
- Business models must be sustainable for all project partners, throughout the pilot and beyond; and
- The flexibility inherent in research authority allows project adjustments to respond to changing realities or changing business priorities, minimizing risk to project participants.

To build on these initial findings, and to continue to advance the state of the practice, the MOD Sandbox Demonstration component of this NOFO will focus on the three key areas below, while encouraging other innovative models and ideas that may not fall into any one category.

Key MOD Sandbox Demonstration Areas:

- *Projects that enhance traveler linkages (first mile/last mile) to transportation hubs*, enabling travelers to access existing transportation resources and foster personal mobility. This can include improved trip planning and payment mechanisms; new service models for linking travelers to transit stations and other transportation hubs; and innovative partnerships and approaches that provide new or expanded options for traveler linkages.
- *Projects that explore new MOD accessibility models, approaches, and technologies, especially those that increase access to transportation choices for older Americans; school-aged populations traveling independently; persons with disabilities; or other individuals with limited ability to access existing public transportation services.*
- *Projects that provide innovative approaches to data sharing arrangements and data collection methods, enabling increased*

*understanding of impacts* to travelers and the community. Innovative approaches include projects that provide open data platforms, open source technologies, and data sharing agreements that allow public and controlled access to project data. Innovative approaches can also include collecting relevant project data to understand MOD impacts such as crowdsourcing information, and incentive-based participation in data collection efforts. FTA expects demonstrations funded under this NOFO to provide a vital real-world testbed as FTA continues to develop a set of mobility metrics that support the vision of the IMI Demonstration program.

New MOD Sandbox demonstration projects selected and funded from this NOFO will be subject to current regulations and policies, the applicability of which is explained by FTA's Shared Mobility Frequently Asked Questions document at <https://www.transit.dot.gov/shared-mobility>. However, FTA understands that innovations proposed in the MOD Sandbox projects may require new Federal guidelines or changes to existing regulations and policies. Thus, FTA encourages applicants to identify in their applications any regulatory or policy challenges they expect to encounter in the implementation of the proposed demonstration. Such requests will be reviewed as part of the application process, and used to help FTA understand barriers to full implementation of MOD demonstrations. This corresponds to the Department's and FTA's commitment to supporting innovation by examining barriers to implementing inventive and practicable demonstration projects in the transit sector, including examining policy and regulatory requirements.

## 2. Transit Automation (\$5 Million, Including \$3 Million for Demonstration 1 and \$2 Million for Demonstration 2)

FTA developed the five-year Strategic Transit Automation Research (STAR) Plan (<https://www.transit.dot.gov/research-innovation/strategic-transit-automation-research-plan-report-0116>) to explore the use of vehicle automation technologies in bus transit operations. The transit industry is increasingly interested in the potential applications and benefits of automation, including safety and operational improvements, cost savings, and new forms of transit service that provide increased mobility, flexibility, and convenience. Additionally, an initial analysis confirmed there are several partial automation applications with a clear

business case for transit agency investment. That is, the technology investment costs for these applications could readily be recouped through future operational savings (STAR Plan, Appendix D: Transit Automation Benefit-Cost Analysis Report. <https://www.transit.dot.gov/research-innovation/strategic-transit-automation-research-plan-report-0116>).

The goal of STAR is to advance transit readiness for automation by:

- Conducting enabling research to achieve safe and effective transit automation deployments;
- Identifying and resolving barriers to deployment of transit automation;
- Leveraging technologies from other sectors to move transit automation forward;
- Demonstrating market-ready technologies in real-world settings; and
- Transferring knowledge to the transit stakeholder community.

This NOFO solicits specific automation projects noted in the STAR plan roadmap, including:

- *Automated Advanced Driver Assistance Systems (ADAS) for Transit Buses*, which seek to demonstrate market-ready or near market-ready advanced driver assistance technologies (automation levels 0–2 as defined in Society of Automotive Engineers (SAE) J3016 [June 2018]) to support partial transit automation in revenue service. And
- *Automated Shuttles*, focusing on shuttle buses with Level 4 automation and with use cases including circulator and feeder bus service.

All automation projects must address a range of factors related to transit, including:

- System performance, capabilities, limitations, and effectiveness;
- Transit operations and maintenance;
- Service quality;
- Safety and security, including cybersecurity;
- Passenger experience, comfort, acceptance, and willingness to use;
- Communication and equipment needs and costs;
- Overall cost-effectiveness; and
- Transferability.

Additional factors that should be included are noted for each of the specific demonstration areas.

### Automated Advanced Driver Assistance Systems (ADAS) for Transit Buses (\$3 Million)—Demonstration 1

In support of the STAR Plan's goal to demonstrate ADAS for Transit Buses (defined as a rubber-tired automotive vehicle used for the provision of public transportation service) projects are

sought that will demonstrate use cases including, but not limited to:

- Smooth acceleration and deceleration;
  - Automatic emergency braking and pedestrian collision avoidance;
  - Curb avoidance;
  - Object avoidance;
  - Precision docking;
  - Narrow lane/shoulder operations;
- and
- Platooning.

A project team may demonstrate one or more use cases. Applicants may also propose other ADAS use cases not identified above.

In addition to the factors related to automation demonstrations, generally, ADAS demonstrations must address:

- Human factors, including training drivers in ADAS operation, establishing understanding to avoid over-reliance on or under-utilization of ADAS, and evaluating the driver-vehicle interface; and
- Bus operator experience and acceptance.

*Eligible Projects:* FTA is seeking innovative projects to demonstrate market-ready or near market-ready advanced driver assistance technologies to support partial transit automation in revenue service. Demonstrations can be conducted with technologies and vehicles that can be adapted or retrofitted to the purpose relatively quickly. Eligible activities include applicable project planning and systems engineering activities leading to the demonstration of ADAS use cases, such as requirements, architecture and design development, installation integration, and testing.

### Automated Shuttles (\$2 Million)—Demonstration 2

FTA will fund one or more projects that demonstrate the integration of automated shuttles into a transit system (e.g., connecting to existing transit stops or integrating with fare payment and trip planning systems) using a route (or several routes) in mixed traffic on public roads.

Demonstrations will utilize nearly market-ready automated shuttles to support transit automation (SAE Level 4). Preference will be given to projects operating in revenue service. Existing automated shuttle projects in the United States and abroad have demonstrated basic functionality and user acceptance, so appropriate projects should seek to demonstrate operations in more complex operating environments (e.g., in mixed traffic on public roads, including operations at intersections) and integrate with an existing transit service (e.g., a station feeder service or

other new routes that provide links to existing transit stops), possibly including integration with payment and trip planning systems. For more information on the Department's voluntary guidance on automated driving systems at SAE levels 3–5 please refer to AV 3.0 at <https://www.transportation.gov/av/3>.

Projects can include one or more automated shuttle use case including, but not limited to, circulator service and/or feeder service.

In addition to the factors related to automation demonstrations, generally, automated shuttle demonstrations must address:

- Human factors, including communicating shuttle intent and human-machine interface;
- Accessibility for people with disabilities, at a level which complies with the Americans with Disabilities Act, and beyond, ensuring contribution to an accessible Complete Trip;
- On-board attendant experience and acceptance; and
- Perceptions and acceptance by other road users, such as bicyclists and pedestrians.

Applicants should also provide information showing that any automated shuttles comply with the National Highway Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (FMVSS) or are operating consistent with an exemption from those standards issued by NHTSA. If, conversely, an applicant wishes to use a vehicle that is not compliant and does not have an applicable exemption, the applicant should provide information concerning its plan to apply for the necessary exemption.

In addition, FTA may also select the Automated Shuttles Demonstration project for "twinning," which is an ongoing knowledge exchange, with a relevant European Commission-funded automated road transport research project.

**Eligible Projects:** FTA is seeking innovative projects to demonstrate nearly market-ready automated shuttles to support transit automation (SAE level 4). Eligible activities include applicable project design and planning activities leading to the demonstration of automated shuttle use cases.

### 3. Mobility Payment Integration (\$2 Million)

The Mobility Payment Integration (MPI) research area was developed from FTA's recognition of the emergence and rapid evolution of the mobility payment marketplace, its importance in managing and integrating mobility, and

ultimately, its overall influence on mobility outcomes. Integrating payment for different types of transportation services in a region can facilitate seamless travel across a variety of modes, including public transportation, transportation network companies, car and bike sharing services, micro-transit providers, and even private vehicles. Payment integration will enable the full use and coordination of public-sector and private-sector mobility resources to expand mobility options in communities across America. In keeping with FTA's commitment to equity and accessibility, payment integration solutions funded under this NOFO will address universal usability by all people, including those with disabilities as well as those who are under-banked or unbanked.

Convenient, useful payment systems are a key provision of FTA's Mobility Innovation goals. To advance the state of the practice in this area, FTA seeks to assess the feasibility of different payment integration technologies and strategies through the MPI demonstrations. Key areas to explore will include back-office operational models (including financial and accounting systems), institutional collaboration and experience, user experience, and interoperability and sustainability of such systems. Furthermore, MPI is also structured to explore the feasibility and impact of integrating payment services beyond the traditional mobility ecosystem, such as retail, banking, and health care industries.

This NOFO solicits demonstration projects in MPI with a focus on two topical areas: *Payment Equity and Human Service Transportation Coordination*; and *Integrated Mobility and Beyond*.

#### Payment Equity and Human Service Transportation Coordination

An informal assessment of data suggests that between 10 and 50% of transit riders use cash as their primary method of payment, to include on-vehicle payment and at transit ticket vending machines. Reasons for cash only payments range from personal preference to lack of access to non-cash payment products or services. In addition, some American households do not have relationships with traditional financial institutions (*i.e.*, they are unbanked). To address these populations, MPI Demonstration 1 will focus on the development and demonstration of mobility payment solutions for one or more of the following groups:

- a. Unbanked and underbanked populations;
  - b. Populations without access to mobile devices and/or mobile data access; and
  - c. Human service transportation users.
- Projects selected under this MPI focus area will plan, develop, demonstrate, evaluate, and refine solutions to ensure equitable access to transit and mobility systems by: Unbanked or underbanked populations; the technology disadvantaged; and vulnerable groups (low-income, minority, older adults, students and young travelers, and people with disabilities). Furthermore, projects should seek to validate payment integration's ability to enhance the experience of travelers from the targeted groups, thus enabling them to more effectively use the mobility system to connect them with more economic, healthcare, educational, social, and recreational opportunities. This demonstration aims to uncover and showcase how public transportation agencies and mobility providers can ensure equity and accessibility when deploying integrated payment solutions.

#### Integrated Mobility and Beyond

Multi-modal and multi-provider payment integration requires enabling technologies and institutional partnerships. Demonstration(s) in this topical area will focus on operationalizing an integrated single payment account across multiple public and private mobility services (*i.e.*, some combination of single or multiple transit agencies plus transportation network companies, bikeshare, carshare, ride hailing, taxi, scooters, and/or microtransit). FTA welcomes applications that address the following opportunities for integration:

- Transportation adjacencies (*e.g.*, tolling, parking, motor vehicle administrative transactions, electric charging stations);
- Specialized and demand-response transportation (*e.g.*, human service transportation, faith-based transportation, non-emergency medical transportation, paratransit, volunteer-based transportation, closed or open-loop shuttle services, employee and campus transportation);
- Multiple non-transit/non-mobility services (*e.g.*, retail, incentivization, loyalty programs);
- Social programs (*e.g.*, travelers with disabilities, student discounts, transit benefits, social security, senior citizens, veteran benefits, human service programs); and
- Access and authorization (*e.g.*, student cards, government IDs, campus/academic cards, library access,

community and facility access, municipal programs, age-based program IDs).

Applicants wishing to pursue an integrated mobility demonstration should address practical and sustainable partnership models among multiple agencies and providers. Applicants will investigate effective system-wide mobility and business or technology partnerships. These partnerships should be supported by scalable and sustainable back-office procedures and operations. Institutional collaboration should address harmonization of business rules and fare policies, as well as collaborative incentivization strategies.

Due to the anticipated complexity of structuring and developing a multi-agency, multi-modal, multi-provider system, FTA recognizes that most applicants will plan and implement their respective mobility payment integration projects in phases beyond the scope of this demonstration. Phases can be structured to capture different aspects such as incremental expansion of service areas or regions, layering of different service providers (transportation, mobility, retail, government, etc.) over a period, expansion of interregional operations, or geography-agnostic interoperability, etc. This incremental approach can leverage lessons learned in each phase to refine and optimize subsequent strategies.

FTA requires that all applicants describe their vision and phased planning and implementation plan toward an integrated mobility payment system, and clearly indicate which phase(s) the requested funding will address.

## B. Federal Award Information

### 1. Amount Available

This notice makes available \$15 million under the Public Transportation Innovation program (49 U.S.C. 5312(b)), which FTA intends to award in the form of cooperative agreements, to support the research, development, demonstration, deployment, and evaluation of research and technology of national significance to public transportation that the Secretary determines will improve public transportation.

### 2. Award Size

There is no minimum or maximum award amount. Rather, project scale will be bounded by each project's ability to complete all proposed planning and development activities and launch the demonstration within 12 months of project award. 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, applications 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. Type of Assistance Instrument

Projects funded through this NOFO will be structured as cooperative agreements in which the federal government will have substantial involvement. The federal role will include active participation in the project activities by attending review meetings, commenting on technical reports, and maintaining frequent contact with the local project manager. FTA reserves the right to re-direct project activities and funding for projects supported under this NOFO and their related activities.

### 4. Previous Award

Recipients of funding under the 2016 Mobility on Demand Sandbox demonstration program may apply for funding to support additional projects or enhancements to previously developed activities. To be competitive, the applicant should demonstrate the extent to which the newly proposed project is indeed a new effort, and not a continuation of a prior project.

### 5. Project Timelines

Projects funded under the IMI Demonstration program will be allowed a maximum of 12 months for project planning. A minimum of 12 months of demonstration activity is required.

### 6. Restrictions on Funding

The IMI Demonstration program is a research and development effort and, as such, FTA Research Circular 6100.1E (available at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/research-technical-assistance-and-training-program>) rules will apply in administering the program.

## C. Eligibility

To be selected for the IMI Demonstration program, an applicant must be an *eligible applicant* and the project must be an *eligible project* as defined below:

### 1. Eligible Applicants

*Eligible applicants* under this notice are providers of public transportation, including public transportation

agencies, state/local government DOTs, and federally recognized Indian tribes. Eligible applicants must identify one or more strategic project partner(s) with a substantial interest and involvement in the project. Applications must clearly identify the eligible applicant and all project partners on the project team.

*Eligible project partners* under this program may include, but are not limited to:

- Private for-profit and not-for-profit organizations, including shared-use mobility providers, technology system suppliers and integrators, automated vehicle technology providers, property managers and developers, and others;
  - private operators of transportation services, such as employee shuttle services, airport connector services, university transportation systems, or parking and tolling authorities;
  - bus manufacturers;
  - state or local government entities, including multi-jurisdictional partnerships, and organizations such as a Metropolitan Planning Organization;
- or

- other organizations including consultants, research consortia or not-for-profit industry organizations, and institutions of higher education.

The project team should include all project partners necessary to successfully carry out the prospective project, and structured to efficiently leverage Federal funds.

The applicant must be able to carry out the proposed agreement and procurements, if needed, with project partners in compliance with all applicable Federal, state, and local laws.

*Key Partners* can be designated by applicants. A key partner is defined as one that shares the costs, risks, and rewards of early deployment and demonstration of innovation. FTA may also determine that any identified project partner in the proposal is a key partner and make any award conditional upon the participation of that key partner. A key partner is essential to the project as approved by FTA and is therefore eligible for a noncompetitive award by the applicant to provide the goods or services described in the application. The applicant shall clearly indicate whether each partner is a key partner. A key partner's participation on a selected project may not be substituted later without FTA's approval.

### 2. Eligible Projects

Eligible activities include all activities leading to the demonstration, such as planning and developing business models, obtaining equipment and service, acquiring or developing software and hardware interfaces to

implement the project, operating the demonstration, and providing data to support performance measurement and evaluation.

FTA continues to seek bold and innovative ideas to advance the vision of MOD: Complete trips for all travelers using emerging technologies, applications, practices, and service models in concert with existing public transportation systems and resources.

Where applicable, eligible projects should consider how to address accessibility for persons with disabilities, including persons who use wheelchairs, and for older riders, affordability for individuals with lower incomes, impacts on the local community, broad access to mobility options for all travelers, as well as payment options that can accommodate all users, including the unbanked and underbanked. Planning activities should ensure that all stakeholders are involved, including people with disabilities. Eligible demonstrations will consist of a minimum 12-month field test and must be implemented and operational within 12 months of project award.

It should be noted that the program description section of this NOFO contains additional eligibility information with respect to the transit automation programmatic area. All applicants should closely review the Program Description section of this NOFO.

### 3. Cost Sharing or Matching

The Federal share of project costs under this program is limited to 80 percent. Applicants may seek a lower Federal contribution. The applicant must provide the local share of the net project cost in cash, or in-kind, and must document in its application the source of the local match. Eligible sources of local match are detailed in FTA Research Circular 6100.1E. (available at <https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTACir6100.1E.docx4.08.2015%282%290.pdf>).

## 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 the following URL: <https://www.transit.dot.gov/funding/grants/applying/applying-fta-funding> 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 (available at *GRANTS.GOV*) and the supplemental form for the 2018 Integrated Mobility Innovation Demonstration program (available at *GRANTS.GOV*). Failure to submit the information as requested can delay review or disqualify the application.

### 2. Content and Form of Application Submission

#### i. Submission

The application must include the Standard Form 424 (Application for Federal Assistance), cover page, and the Project Narrative, with the Applicant and a Proposal Profile supplemental form attached. The application must include responses to all sections of the SF-424 mandatory form and the supplemental form unless a section is designated as optional. FTA will use the information on the supplemental form 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 accept only one supplemental form per SF-424 submission. FTA encourages applicants to consider submitting a single supplemental form that includes multiple activities to be evaluated as a consolidated proposal. If an applicant chooses to submit separate proposals for individual consideration by FTA, it must submit each proposal with a separate SF-424 and supplemental form.

An applicant may attach additional supporting information to the SF-424 submission and supplemental form 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 applicant name, Federal amount requested, local match amount, description of areas served, etc., may be requested in varying degrees of detail on both the SF-424 form and supplemental form. An applicant must fill in all fields unless stated otherwise on the forms. If copying information into the supplemental form from another source, the applicant should verify that the supplemental form has fully captured pasted text and that it has not truncated the text due to character limits built into

the form. An applicant 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. An applicant should also ensure that the Federal and local amounts specified are consistent throughout the application.

#### ii. Application Content

The SF-424 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 districts where the project will be carried out.
- e. A description of the technical, legal, and financial capacity of the applicant.
- f. A discussion of the overall goals of the proposed project, with proposed performance measures including the current state of mobility innovation in the community or service area of the proposed project, current challenges in providing robust, flexible, and accessible transportation options, integration challenges or gaps, and how the proposed project will address those needs. The discussion should include demographics for the areas expected to be served, a description of the current opportunities and need to improve mobility choices for all, and if applicable, recent local and/or national trends or developments that make this proposed project particularly timely. Additionally, all proposals should describe the extent to which the project builds, if applicable, on past research, innovation, or development efforts, and how this project will further advance innovative practices.

g. A description of the project partners, both technical and institutional, their roles, and their anticipated contributions. Indicate which of the project partners are “key partners” essential to the success of the proposed project. Additionally, the project team is encouraged to provide letters of commitment or support from each of the project partners as well as any agreements among the project partners. Describe the business model, service model, or approach that will be used to implement the demonstration project and any public-private partnerships formed to achieve the project objectives. Specify any unique or innovative approaches used to

coordinate and coalesce the project partners and local stakeholders.

h. A discussion of the expected outcomes and benefits of the proposed project to the individual travelers and the community; and how the goals and outcomes will be measured.

i. A description of the extent to which the proposed project is replicable in other communities, and the national significance of the project, if any.

j. A description of how, and the extent to which, the proposed project addresses accessible and equitable mobility service for all travelers, including persons with disabilities, older individuals, school age populations, and individuals with lower incomes or in underserved communities.

k. A description of any Federal, state, or local requirements or policies that the project team expects to present challenges to successfully implementing the proposed project.

l. A preliminary data management plan (DMP) which details the types of data that will be generated, and how the project team will provide access for FTA or its designee to this project-related data for purposes of evaluation, and a subset to the public.

m. A detailed description and supporting evidence (*e.g.*, signed memorandum of understanding, executed data agreements, detailed plans on what and how to share data between partners, etc.) related to project data collection, management, sharing, and usage.

n. A timeline of project implementation detailing all significant milestones and the roles of the responsible project partners. The timeline should include elements such as when the project will start, when it will be fully operational, and the length of time for anticipated data collection activities.

o. Financials and Budget

- Identify funding requirements for the proposed project, noting the specific sources and uses for the funds proposed, with enough detail to indicate the various key components of the project.

- Document the matching funds, including amount and source of the match (may include local or private sector financial participation in the project), or documents supporting the commitment of non-Federal funding to the project, or a timeframe upon which those commitments would be made.

Applicants may attach to the supplemental form supporting materials and documentation as appropriate. Applicants are encouraged to clearly reference all attachments in the

Applicant and Proposal supplemental form. Suggested attachments include graphics, maps, letters of support, and other documents to support the proposal.

### 3. *Dun and Bradstreet Universal Numbering System (DUNS) Number and System for Award Management (SAM)*

Each applicant is required to: (i) Be registered in SAM before submitting its application; (ii) provide a valid DUNS number in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by FTA. FTA may not make a grant award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements. FTA will review an applicant's SAM registration status to make responsibility determination.

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. All applicants must provide a unique entity identifier provided by SAM. Registration in SAM may take as little as 3–5 business days, but there can be unexpected steps or delays. For example, the applicant may need to obtain an Employer Identification Number. FTA recommends allowing ample time, up to several weeks, to complete all steps. For additional information on obtaining a unique entity identifier, please visit [www.sam.gov](http://www.sam.gov).

### 4. *Submission Dates and Times*

Project proposals must be submitted electronically through *GRANTS.GOV* by 11:59 p.m. Eastern Time on August 6, 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 the applicant does not receive confirmation of successful validation or receives a notice of failed validation or incomplete materials, 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, applicants must 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 update their registration before submitting an application. Registration in SAM is renewed annually and persons making submissions on behalf of the Authorized Organization Representative (AOR) must be authorized in *GRANTS.GOV* by the AOR to make submissions.

### 5. *Executive Order 12372 (Intergovernmental Review)*

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this NOFO.

### 6. *Funding Restrictions*

Funds under this NOFO cannot be used to reimburse projects for otherwise eligible expenses incurred prior to FTA award of a Cooperative Agreement unless FTA has issued a "Letter of No Prejudice" for the project before the expenses are incurred.

The Integrated Mobility Innovation Demonstration program is a research, development, and demonstration effort and as such FTA Research Circular 6100.1E rules will apply in administering the program.

### 7. *Other Submission Requirements*

FTA encourages applicants 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 a reduced reward would affect the project budget. FTA may award a lesser amount regardless of whether the applicant provides a scalable option.

## E. Application Review

### 1. Selection Criteria

Project proposals will be evaluated by FTA per the following five selection criteria. FTA strongly encourages each applicant to demonstrate the responsiveness of a project to all criteria shown below with the most relevant information that the applicant can provide.

The five selection criteria are:

*i. Project Impact and Outcomes*—FTA is seeking projects that address demonstrated mobility needs in the local community and uncover the potential of integrated mobility innovation to benefit the mobility of all users, including those with a range of functional abilities. Applicants should provide adequate contextual information about the nature of these needs (supported with statistical analysis, operational data, maps, and/or diagrams, where relevant) and clearly articulate how their proposal is designed to address those challenges, and meet FTA's goals for Mobility Innovation.

Applications should indicate how they expect to use the data they collect to evaluate the impact of their project, recognizing that ultimately this will involve collaboration between the applicant and an independent evaluator. Specifically, an essential element of all applications is a set of performance measures that clearly notes how success with the goals of the proposal will be measured and how the data will be collected.

*ii. Innovation*—The application should discuss the expected utility of new service models, systems, and technologies in ways that advance FTA's mobility goals and the state of the practice. Applications that test multiple innovative approaches will be given higher consideration.

*iii. Transferability and Technology Transfer*—Since knowledge transfer is a key goal of demonstrations, proposals that have a high degree of transferability to other public transportation agencies

and locations or are otherwise scalable will be given priority. Additionally, applicants should note how they will support technology transfer of their findings, and are encouraged to note outreach mechanisms to support information sharing.

*iv. Project Approach*—The proposed project must be explained in sufficient detail and clarity to engender confidence in its eventual success. The proposal should present a realistic and detailed description of the overall project workflow, delineating project roles and responsibilities, and noting potential project risks and mitigations. The project budget should be supported by documentation on the source and credibility of the estimates. Sources of local matching funds should be clearly identified and documented, noting any restrictions or limitations to use. A robust evaluation framework should be provided, including details on how relevant demonstration data will both be collected, stored, and shared, with assurances that there are no contractual or other impediments to sharing data with FTA and the independent evaluator. FTA favors applications that evidence detailed readiness (such as a signed data agreement) among all project partners for project data collection, management, sharing, and use. Applications that demonstrate strong commitment to share data with FTA, in a way that addresses confidential business information (CBI) or Personally Identifiable Information (PII) concerns, will be viewed more positively.

*v. Team Capacity, Experience, and Commitment*—Applicants should provide information on the experience and capabilities of the project management team and implementation staff, and the extent of local commitment to the project and any relevant partnerships, including with other public-sector entities. Applications must evidence an understanding of the current state of the practice in mobility. Applicants are advised to submit information on partners' qualification and experience as a part of the application. FTA is seeking proposals that minimize project risk through appropriate staffing and robust community support. However, prior experience with similar projects is not required.

Each selection criterion will be judged in the frame of the Area of Inquiry identified by the applicant. Therefore, applicants should clearly reference how their proposal advances the specific goals, objectives, and other intents of the applicable Area of Inquiry as they address the selection criteria.

### 2. Review and Selection Process

A technical evaluation panel comprising FTA, other Departmental, and/or Federal agency staff will review project proposals against the selection criteria listed above. The technical evaluation committee may seek clarification from any applicant about any statement made in a proposal. FTA may also request additional documentation or information to be considered during the evaluation process. After the evaluation of all eligible proposals, the technical evaluation committee will provide project recommendations to the FTA Administrator. The FTA Administrator will determine the final list of project selections, and the amount of funding for each project. Geographic diversity, diversity of project type, the applicant's receipt of other Federal funding, and projects located in or that support public transportation service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z-1 may be considered in FTA's award decisions. FTA may prioritize projects proposed with a higher local share.

In addition to the criteria and considerations outlined in this section, the FTA Administrator will consider the following key Departmental objectives:

- Supporting economic vitality at the national and regional level;
- Leveraging Federal funding to attract other, non-Federal sources of investment, including value capture;
- Using innovative approaches to improve safety and expedite project delivery; and
- Holding grant recipients accountable for their performance and achieving specific, measurable outcomes with supporting data.

## F. Federal Award Administration

### 1. Federal Award Notice

The FTA Administrator will announce the final project selections on the FTA website.

### 2. Administrative and National Policy Requirements

#### i. Independent Evaluation

Projects funded under this announcement will be subject to evaluation by an independent evaluator selected and funded separately by FTA. Recipients will be required to coordinate with the independent evaluator to assist in developing an evaluation plan; and collecting, storing, and managing data required to fulfill that evaluation plan.

## ii. Draft Mobility Metrics

Projects funded under this announcement will be required to support the efforts of FTA or its designee to evaluate the project and its outcomes against a set of in-development Mobility Metrics, which will be shared with selected project teams upon award.

## iii. Data Access and Data Sharing

Projects funded under this announcement will be required to gather and share all relevant and required data with the FTA within appropriate and agreed-upon timelines, to support project evaluation.

The Department may make available a secure data system to store data for evaluation (more information available at <https://its.dot.gov/data/secure/>), or projects may suggest an appropriate third-party system where Departmental analysts can conduct their work, with FTA approval. Applicants should budget for the costs of data storage and sharing as appropriate.

In response to the White House Office of Science and Technology Policy memorandum dated February 22, 2013, entitled *Increasing Access to the Results of Federally Funded Scientific Research*, the Department is incorporating Public Access requirements into all funding awards (grants and cooperative agreements) for scientific research. All work conducted under the Integrated Mobility Innovation Demonstration program must follow the Department data policies outlined in the DOT Public Access Plan at: <https://ntl.bts.gov/public-access/how-comply>. Recipients are required to include these obligations in any sub-awards or other related funding agreements.

The FTA expects Recipients to remove CBI and PII before providing public access to project data. Recipients must ensure the appropriate data are accessible to the FTA and/or the public for a minimum of five years after the award period of performance expires.

Additionally, information submitted as part of or in support of an IMI Demonstration program-funded project shall make every attempt to use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. FTA recognizes that certain partnerships may pose a challenge to data sharing and will work with each recipient to develop an appropriate data management plan (DMP) building upon the preliminary DMP submitted in the application.

Recipients must make available to the Department copies of all work

developed in performance of a project funded under this announcement, including but not limited to software and data. Data rights shall be in accordance with 2 CFR 200.315, Intangible property.

If the submission includes information the applicant considers to be trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission “Contains Confidential Business Information (CBI)”; (2) mark each affected page “CBI”; and (3) highlight or otherwise denote the CBI portions. FTA protects such information from disclosure to the extent allowed under applicable law. If FTA receives a Freedom of Information Act (FOIA) request for the information, FTA will follow the procedures described in the Department’s FOIA regulations at 49 CFR part 7.

## iv. Knowledge and Technology Transfer

Project teams may be asked to participate in information exchange meetings, webinars, or outreach events to support FTA’s goal of advancing the state of the practice. Project teams will be required to work with FTA to support knowledge transfer by participating in a relevant community of practice or similar activity. Applicants should allocate a portion of their budgets to support such work, which may include travel or presentations at key industry gatherings, such as conferences of the American Public Transportation Association (APTA), Community Transportation Association of America (CTAA), American Association of State Highway and Transportation Officials (AASHTO), Intelligent Transportation Society of America (ITSA) America, Transportation Research Board (TRB), and the Department, among others.

Projects with significant potential impacts on the mobility of persons with disabilities will be specifically encouraged to participate in FTA-supported cross-program coordination efforts. Such collaboration will bring together experts from the public, private, government, and academic sectors who share information and lessons learned from the development of technologies and business models with the potential to reduce the mobility barrier facing those with disabilities. The intent of this participation is to promote the success of projects funded under this NOFO, and to transfer knowledge and practices specific to accessibility.

## v. Equity and Accessibility Planning

Funded projects will be required to produce, within 4 months of award, a draft equity and accessibility plan. Such plans will clearly identify the steps to be taken to ensure the usability of the proposed service or technology by people with disabilities, as well as those who are unbanked or have lower incomes. As part of these plans, projects will be required to engage a stakeholder group comprised of representatives of impacted communities, and to clearly identify how stakeholder input will be garnered and utilized in the project’s development.

## vi. 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 discretionary 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. <https://www.govinfo.gov/content/pkg/FR-2018-07-16/pdf/2018-14989.pdf>.

## vii. Planning

FTA encourages applicants to notify the appropriate State Departments of Transportation and Metropolitan Planning Organizations (MPO) in areas likely to be served by the project funds made available under these initiatives and programs.

## viii. 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 agreement. The applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative 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 entering into a grant or cooperative agreement if it does not have current certifications on file.

## ix. Buy America

FTA requires that all capital procurements meet FTA's Buy America requirements per 49 U.S.C. 5323(j), which require that all iron, steel, or manufactured products be produced in the United States. Federal public transportation law provides 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. FTA issued guidance on the implementation of the phased increase in domestic content on September 1, 2016 (81 FR 60278). Applicants should read the policy guidance carefully to determine the applicable domestic content requirement for their project. Any proposal that will require a waiver must identify in the application the items for which a waiver will be sought. Applicants should not proceed with the expectation that waivers will be granted, nor should applicants assume that selection of a project under the Low-No Program that includes a partnership with a manufacturer, vendor, consultant, or other third party constitutes a waiver of the Buy America requirements applicable at the time the project is undertaken. Consistent with Executive Order 13858 Strengthening Buy-American Preferences for Infrastructure Projects, signed by President Trump on January 31, 2019, applicants should maximize the use of goods, products, and materials produced in the United States, in Federal procurements and through the terms and conditions of Federal financial assistance awards. Additional information on Buy America requirements can be found at <https://www.transit.dot.gov/buyamerica>.

**G. Federal Awarding Agency Contacts**

For further information concerning this NOFO, please contact Mr. Hendrik Opstelten by phone at 202-366-8094, or by email at [hendrik.opstelten@dot.gov](mailto:hendrik.opstelten@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/imi>. To ensure applicants receive accurate information about eligibility or the

program, the applicant is encouraged to contact FTA directly, rather than through intermediaries or third parties, with questions.

Issued in Washington, DC.

**K. Jane Williams,**  
*Acting Administrator.*

**Address Name**  
**Address Line 2**  
**City, State, Zip**

**Dear Name:**

Thank you for your letter supporting the application submitted by **Applicant** under the U.S. Department of Transportation's Fiscal Year (FY) 2019 Integrated Mobility Innovation (IMI) Demonstration program.

The IMI Demonstration program is administered by the Federal Transit Administration (FTA), and funded under Federal public transportation law (49 U.S.C. 5312) through the Federal Public Transportation Innovation program. FTA expects to award several cooperative agreements up to a total of \$15 million under this program.

The IMI Demonstration program's primary purpose is to fund projects that demonstrate innovative, effective approaches, practices, partnerships, and technologies to enhance public transportation effectiveness, increase efficiency, expand quality, promote safety, and improve the traveler's experience. The program will fund solutions in one or more of the three areas identified in the notice of funding opportunity: Mobility on Demand, Transit Automation, and Mobility Payment Integration.

All properly submitted applications for this funding will receive full and careful consideration. FTA will announce final project selections after the review process is complete.

Your interest in this program is appreciated.

Sincerely,

**Signatory**

[FR Doc. 2019-09269 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-57-P**

**DEPARTMENT OF TRANSPORTATION****Maritime Administration**

[Docket No. MARAD-2019-0078]

**Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ALLANA (Sailboat); Invitation for Public Comments**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2019-0078 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0078 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0078, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453, Washington, DC 20590. Telephone 202-366-9309, email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ALLANA is:

—*Intended Commercial Use of Vessel:*

“Primarily used as a training vessel to teach ASA sailing courses as well as sunset cruises”

—*Geographic Region Including Base of Operations:* “North Carolina” (Base of Operations: Wrightsville Beach, NC)

—*Vessel Length and Type*: 38' sailboat  
The complete application is available for review identified in the DOT docket as MARAD–2019–0078 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

### Public Participation

#### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

#### *Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2019–0078 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

#### *Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

#### *May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE,

Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2019–09365 Filed 5–7–19; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2019–0075]

#### **Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ARIEL (Power Catamaran); Invitation for Public Comments**

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2019–0075 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2019–0075 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0075, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

#### **FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ARIEL is:

—*Intended Commercial Use of Vessel:*  
“The vessel will perform sightseeing and coastal snorkel charter in Hawaii”  
—*Geographic Region Including Base of Operations:* “Hawaii” (Base of Operations: Kona, HI)  
—*Vessel Length and Type:* 38' power catamaran

The complete application is available for review identified in the DOT docket as MARAD–2019–0075 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver

criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

### Public Participation

#### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

#### *Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0075 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

#### *Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

#### *May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether

or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.**

*Secretary, Maritime Administration.*

[FR Doc. 2019-09363 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2019-0074]

#### **Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ROGUE ANGEL (Catamaran); Invitation for Public Comments**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2019-0074 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0074 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0074, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

**Note:** If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body

of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

#### **FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ROGUE ANGEL is:

—*Intended Commercial Use of Vessel:*

“Crewed Charters with six or less passengers.”

—*Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Milton, FL)

—*Vessel Length and Type:* 44' catamaran

The complete application is available for review identified in the DOT docket as MARAD-2019-0074 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

### Public Participation

#### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2019–0074 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR–225, W24–220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*.

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2019–09364 Filed 5–7–19; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD–2019–0077]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel FURY (Sailboat); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD–2019–0077 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD–2019–0077 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD–2019–0077, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:** Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey

Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel FURY is:

—*Intended Commercial Use of Vessel:*

“Local sailing charters in Puget Sound and adjacent waters of Washington State. Mostly day charters, but possible overnight charters.”

—*Geographic Region Including Base of Operations:* “Washington State” (Base of Operations: Seattle, WA)

—*Vessel Length and Type:* 42’ sailboat

The complete application is available for review identified in the DOT docket as MARAD–2019–0077 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD–2019–0077 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal

identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121) \* \* \*

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2019-09367 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

[Docket No. MARAD-2019-0073]

**Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PANACHE (Motor Vessel); Invitation for Public Comments**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-

build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2019-0073 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0073 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0073, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

**FOR FURTHER INFORMATION CONTACT:**

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453, Washington, DC 20590. Telephone 202-366-9309, email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel PANACHE is:

—*Intended Commercial Use of Vessel:* “Recreational charter”

—*Geographic Region Including Base of Operations:* “California, Washington State” (Base of Operations: Long Beach, CA)

—*Vessel Length and Type:* 78’ motor vessel

The complete application is available for review identified in the DOT docket

as MARAD-2019-0073 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

**Public Participation**

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0073 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible,

a summary of your submission that can be made available to the public.

### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2019-09368 Filed 5-7-19; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2019-0071]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel TRES SUENOS (Catamaran); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2019-0071 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search

MARAD-2019-0071 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0071, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453, Washington, DC 20590. Telephone 202-366-9309, Email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

#### SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel TRES SUENOS is:—*Intended Commercial Use of Vessel:* “The intended commercial use of the vessel is to teach our customers about Lift foils and how to use our products. We will be offering day sailing and overnight charters for this purpose.”—*Geographic Region Including Base of Operations:* “Puerto Rico” (Base of Operations: Cabo Rojo, PR)—*Vessel Length and Type:* 62’ catamaran

The complete application is available for review identified in the DOT docket as MARAD-2019-0071 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the

commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

### Public Participation

#### How do I submit comments?

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

#### Where do I go to read public comments, and find supporting information?

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0071 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

#### Will my comments be made available to the public?

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

#### May I submit comments confidentially?

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their

organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*.

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2019-09366 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2019-0076]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DUTY SERVED (Motor Vessel); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2019-0076 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0076 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0076, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you

include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, see the section entitled *Public Participation*.

#### FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453, Washington, DC 20590. Telephone 202-366-9309, email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel DUTY SERVED is:

—*Intended Commercial Use of Vessel:*

“Fishing charter (up to six passenger)”

—*Geographic Region Including Base of Operations:* “Florida, Georgia, Louisiana, Mississippi, Alabama” (Base of Operations: Port Canaveral, FL)

—*Vessel Length and Type:* 32’ motor vessel

The complete application is available for review identified in the DOT docket as MARAD-2019-0076 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Public Participation

*How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English.

We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0076 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*.

Dated: May 2, 2019.

By Order of the Maritime Administrator.  
**T. Mitchell Hudson, Jr.,**  
 Secretary, Maritime Administration.  
 [FR Doc. 2019-09369 Filed 5-7-19; 8:45 am]  
**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2019-0072]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel GETAWAY (Motor Vessel); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirements of the coastwise trade laws to allow the carriage of no more than twelve passengers for hire on vessels, which are three years old or more. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before June 7, 2019.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2019-0072 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2019-0072 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2019-0072, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov),

including any personal information provided. For detailed instructions on submitting comments, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

Bianca Carr, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-453, Washington, DC 20590. Telephone 202-366-9309, email [Bianca.carr@dot.gov](mailto:Bianca.carr@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel GETAWAY is:

—*Intended Commercial Use of Vessel:* “Vessel will be used for salmon fishing, crabbing and scenic wildlife charters out of Haines, Alaska during the summer season. Use will be for day trips only with a max of 6 passengers.”

—*Geographic Region Including Base of Operations:* “Alaska” (Base of Operations: Haines, AK)

—*Vessel Length and Type:* 34” motor vessel

The complete application is available for review identified in the DOT docket as MARAD-2019-0072 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the vessel name, state the commenter’s interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2019-0072 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Department of Transportation, Maritime Administration, Office of Legislation and Regulations, MAR-225, W24-220, 1200 New Jersey Avenue SE, Washington, DC 20590. Include a cover letter setting forth with specificity the basis for any such claim and, if possible, a summary of your submission that can be made available to the public.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

**Authority:** 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121 \* \* \*.

Dated: May 2, 2019.

By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2019-09370 Filed 5-7-19; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**  
**Pipeline and Hazardous Materials**  
**Safety Administration**

**Hazardous Materials: Notice of Actions**  
**on Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety

has received the application described herein.

**DATES:** Comments must be received on or before June 7, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of

Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC, or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 2, 2019.

**Donald P. Burger,**  
*Chief, General Approvals and Permits Branch.*

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
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**Special Permits Data—Granted**

10922-M .....	FIBA TECHNOLOGIES, INC ..	173.302(a), 180.205, 180.207(d)(1), 172.302(c).	To modify the special permit to authorize non-DOT cylinders to be requalified using ultrasonic examination.
12116-M .....	PROSERV UK LTD .....	173.201, 173.301(f), 173.302a, 173.304a.	To authorize the addition of new Type 5 Severs Service Cylinders.
13250-M .....	PACIFIC CONSOLIDATED INDUSTRIES LLC.	173.302a(a)(1), 173.304a(a)(1).	To modify the special permit to authorize an extension of cylinder life utilizing the Modal Acoustic Emission (MAE) test method.
14453-M .....	FIBA TECHNOLOGIES, INC ..	180.209(a), 180.209(b), 180.209(b)(1)(iv).	To modify the special permit to authorize non-DOT cylinders manufactured under special permit to be requalified every ten years using 100% ultrasonic examination.
14509-M .....	PACIFIC CONSOLIDATED INDUSTRIES LLC.	173.302(a), 173.302(f)(3), 173.302(f)(4), 173.302(f)(5), 173.304(a), 175.501(e)(3).	To modify the special permit to authorize an extension of cylinder life utilizing the Modal Acoustic Emission (MAE) test method.
20799-N .....	MULTI-CHEM, INC .....	173.40(d)(2), 173.226(a) .....	To authorize the transportation in commerce of Acrolein, stabilized in DOT 4BW240 cylinders.
20814-N .....	SAFT AMERICA INC .....	172.101(j) .....	To authorize the transportation in commerce of certain lithium batteries with a net mass greater than 35 kg aboard cargo-only aircraft.
20821-N .....	SPACEFLIGHT, INC .....	173.185(a) .....	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment via air transportation.
20824-N .....	WORTHINGTON CYLINDER CORPORATION.	178.65(f)(2)(iii) .....	To authorize the manufacture, mark, sale, and use of non-DOT specification cylinders conforming to the DOT 39 specification, except as provided herein.
20842-N .....	STERILMED, INC .....	172.203(a), 172.301(c), 173.134.	To authorize the transportation in commerce of packages of medical equipment as excepted from the requirements of the Hazardous Materials Regulations without including an itemized count of equipment contained within the package.
20847-N .....	CHART INC .....	173.315(a)(2) .....	To authorize the manufacture, marking, sale and use of DOT MC 338 cargo tanks for use in the transportation of carbon dioxide, refrigerated liquid.
20849-N .....	Collins Aerospace .....	172.203(a), 173.301(g) .....	To authorize the transportation in commerce of manifolded cylinders that do not meet the requirements of 49 CFR 173.301(g).
20859-N .....	TOYOTA MOTOR SALES USA INC.	172.301(d) .....	To authorize the transportation in commerce of airbag inflators in overpack enclosures without marking each package with the name and address of the consignor or consignee when transported domestically on aircraft.

**Special Permits Data—Denied**

20844-N .....	PAVE NORTHWEST, INC .....	173.203 .....	To authorize the transportation in commerce of non-DOT specification non-bulk packagings containing UN3264, corrosive liquid, acidic, inorganic, n.o.s. (contains aluminum sulfate).
20863-N .....	Vwk9, LLC .....	173.62, 173.22 .....	To authorize the transportation of explosives in non-specification packaging.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
<b>Special Permits Data—Withdrawn</b>			
20846-N .....	CAPELLA SPACE CORP .....	173.185(a) .....	To authorize the transportation in commerce of low production lithium ion batteries contained in equipment via motor vehicle and cargo-only aircraft.
20848-N .....	Cummins Inc .....	172.101(j), 173.185(a) .....	To authorize the transportation in commerce of prototype and low productions lithium batteries in excess of 35 kg by cargo-only aircraft.

[FR Doc. 2019-09385 Filed 5-7-19; 8:45 am]  
 BILLING CODE 4909-60-P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Hazardous Materials: Notice of Applications for Modifications to Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for modification of special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation’s Hazardous Material Regulations, notice is hereby given that

the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the “Nature of Application” portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before May 23, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of

Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington DC or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 2, 2019.

**Donald P. Burger,**  
 Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
<b>Special Permits Data</b>			
12516-M .....	POLY-COAT SYSTEMS, INC	107.503(b), 107.503(c), 173.241, 173.242.	To modify the special permit to remove the request to get authorization from the Approvals and Permits Division before modifying, stretching or re-barreling. (mode 1)
14576-M .....	STRUCTURAL COMPOSITES INDUSTRIES LLC.	172.101(j), 173.302a(a)(1), 173.304a(a)(1).	To modify the special permit to reduce the burst pressure from 3.4 times service pressure to 3.0 times the service pressure. (modes 1, 3, 4)
16140-M .....	ERA HELICOPTERS, LLC .....	172.101(j) .....	To modify the special permit to add additional hazmat, to expand the transport zones and to add support for the space program. (mode 5)
16308-M .....	VERO BIOTECH LLC .....	173.175 .....	To modify the special permit to clarify the packaging used description. (modes 1, 2, 3, 4, 5)
20323-M .....	GENERAL DYNAMICS MISSION SYSTEMS, INC.	173.185(a)(1)(i) .....	To modify the special permit to authorize transportation of prototype Lithium Ion Batteries and Lithium Metal Batteries contained in equipment. (mode 4)
20549-M .....	CELLBLOCK FCS, LLC .....	172.400, 172.700(a), 172.102(c)(1), 172.200, 172.300.	To modify the special permit to authorize the transportation in commerce of larger batteries (Wh >300) without shipping papers, labeling, marking and training. (modes 1, 3)
20571-M .....	CATALINA CYLINDERS, INC	173.302a, 178.71(l)(1)(i), 178.71(l)(1)(ii).	To modify the special permit to authorize a 15 year service life from the cylinder’s date of manufacture. (modes 1, 2, 3, 4)
20709-M .....	DAIMLER AG .....	172.101(j), 173.185(a) .....	To modify the special permit to authorize an increase in the battery and package weight. (mode 4)

[FR Doc. 2019-09383 Filed 5-7-19; 8:45 am]  
 BILLING CODE 4909-60-P

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Hazardous Materials: Notice of Applications for New Special Permits**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations, notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for

which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before June 7, 2019.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and

Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

**SUPPLEMENTARY INFORMATION:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC, or at <http://regulations.gov>.

This notice of receipt of applications for special permit is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 2, 2019.

**Donald P. Burger,**  
Chief, General Approvals and Permits Branch.

Application No.	Applicant	Regulation(s) affected	Nature of the special permits thereof
<b>Special Permits Data</b>			
20861-N .....	AYALYTICAL INSTRUMENTS INC.	173.120(c) .....	To authorize the use of an alternate method for determining flash point for Class 3 materials. (modes 1, 2, 3, 4, 5)
20862-N .....	CUMMINS INC .....	172.101(j), 173.185(a) .....	To authorize the transportation in commerce of low production lithium ion batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
20864-N .....	SALMON RIVER HELICOPTERS, INC.	172.101(j), 172.200, 175.33 .....	To authorize the transportation in commerce of certain materials forbidden for transport via passenger-carrying aircraft by passenger-carrying aircraft. (mode 5)
20865-N .....	PORSCHE LOGISTIK GMBH	172.101(j) .....	To authorize the transportation in commerce of lithium batteries exceeding 35 kg by cargo-only aircraft. (mode 4)
20866-N .....	ARGON ST INC .....	172.101(j) .....	To authorize the transportation in commerce of lithium ion batteries contained in equipment with a net weight in excess of 35 kg by cargo-only aircraft. (mode 4)
20867-N .....	Advanced Material Systems Co. (AMS).	173.302 .....	To authorize the transportation in commerce of non-DOT specification cylinders. (modes 4, 5)
20868-N .....	DYNO NOBEL INC .....	176.164(e) .....	To authorize the transportation in commerce of Class 1 materials by vessel without having two sets of breathing apparatus and a power-operated fire pump. (ferry vessel)
20869-N .....	BALL METALPACK, LLC .....	173.304a(d)(3)(ii) .....	To authorize the manufacture, mark, sale, and use of non-DOT specification inside containers for the transportation of certain Division 2.1 gases. (modes 1, 2, 3)
20871-N .....	CASTLE AVIATION, INC .....	172.203(a), 175.700(b)(2)(ii), 175.701(a).	To authorize the transportation in commerce of Class 7 materials with a transport index greater than that which the HMR authorizes. (mode 4)
20874-N .....	ZHEJIANG TERONG MACHINERY CO., LTD.	173.304 .....	To authorize the transportation in commerce of 2P containers containing liquefied gas.
20875-N .....	AIR LIQUIDE ADVANCED MATERIALS INC.	173.3(d)(2) .....	To authorize the transportation in commerce of Division 4.2 materials overpacked in salvage cylinders. (modes 1, 3)
20876-N .....	Sodastream USA .....	178.71 .....	To authorize the transportation in commerce of UN pressure vessels that use alternative valve standards than are required by the HMR. (modes 1, 2, 3)

**DEPARTMENT OF THE TREASURY****Office of the Comptroller of the Currency**

[Docket ID OCC–2019–0005]

**Mutual Savings Association Advisory Committee; Meeting**

**AGENCY:** Department of the Treasury, Office of the Comptroller of the Currency (OCC).

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

**DATES:** A public meeting of the MSAAC will be held on Thursday, May 23, 2019, beginning at 8:30 a.m. Eastern Daylight Time (EDT).

**ADDRESSES:** The OCC will hold the May 23, 2019 meeting of the MSAAC at the OCC's offices at 400 7th Street SW, Washington, DC 20219.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Brickman, Designated Federal Officer, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** By this notice, the OCC is announcing that the MSAAC will convene a meeting on Thursday, May 23, 2019, at the OCC's offices at 400 7th Street SW, Washington, DC 20219. The meeting is open to the public and will begin at 8:30 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Thursday, May 16, 2019. Members of the public may submit written statements to [MSAAC@occ.treas.gov](mailto:MSAAC@occ.treas.gov) or by mailing them to Michael R. Brickman, Designated Federal Officer, Mutual Savings Association Advisory Committee, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Thursday, May 16, 2019, to inform the OCC of their desire to attend the meeting and to provide information that will be required to facilitate entry into the

meeting. Members of the public may contact the OCC via email at [MSAAC@OCC.treas.gov](mailto:MSAAC@OCC.treas.gov) or by telephone at (202) 649–5420. Members of the public who are hearing impaired should call (202) 649–5597 (TTY) by 5:00 p.m. EDT on Thursday, May 16, 2019, to arrange auxiliary aids such as sign language interpretation for this meeting.

Attendees should provide their full name, email address, and organization, if any. For security reasons, attendees will be subject to security screening procedures and must present a valid government-issued identification to enter the building.

Dated: May 2, 2019.

**Morris Morgan,**  
*Senior Deputy Comptroller and Chief Operating Officer.*

[FR Doc. 2019–09433 Filed 5–7–19; 8:45 am]

**BILLING CODE 4810–33–P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for the Annual Return/Report of Employee Benefit Plan**

**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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the Annual Return/Report of Employee Benefit Plan.

**DATES:** Written comments should be received on or before July 8, 2019 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at [Martha.R.Brinson@irs.gov](mailto:Martha.R.Brinson@irs.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Return/Report of Employee Benefit Plan.

*OMB Number:* 1545–1610.

*Form Number:* 5500 and Schedules.

*Abstract:* The Annual Return/Report of Employee Benefit Plan is an annual information return filed by employee benefit plans. The IRS uses this information for a variety of matters, including ascertainment whether a qualified retirement plan appears to conform to requirements under the Internal Revenue Code or whether the plan should be audited for compliance. Form 5500–EZ (OMB Number: 1545–0956) is an annual return filed by a one-participant (owners/partners and their spouses) retirement plan or a foreign plan to satisfy certain annual reporting and filing requirements imposed by the Internal Revenue Code (Code). The IRS uses this data to determine if the plan appears to be operating properly as required under the Code or whether the plan should be audited.

*Current Actions:* PBGC, the Department of Labor (DOL), and the Internal Revenue Service (IRS) work together to produce the Form 5500 Annual Return/Report for Employee Benefit Plan and Form 5500–SF Short Form Annual Return/Report for Small Employee Benefit Plan (Form 5500 Series), through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans. The Form 5500 and Form 5500–SF are currently filed electronically through the web-based EFAST2 system. The Form 5500–EZ is currently filed on paper with the IRS or by answering a subset of questions on the Form 5500–SF, which is then filed electronically through EFAST2. The IRS plans to make the Form 5500–EZ available on the EFAST2 system for direct electronic filing instead of using Form 5500–SF. The Form 5500–EZ (currently OMB Number: 1545–0956) will also be subsumed under the OMB number for the Form 5500 and Form 5500–SF, 1545–1610 as a separate collection. The Form 5500–EZ would still be available to be filed on paper with the IRS.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals and households, not-for profit institutions, and farms.

The number of filing and wage rates are unchanged from the 2019 5500/5500–SF submission Approved on April 26, 2019.

	2019— Requested	Program change due to new statute	Program change due to agency discretion	Change due to adjustment in agency estimate	Change due to potential violation of the PRA	Previously approved
Annual Number of Responses for this IC	804,000	0	.....	–29,000	0	833,000
Annual IC Time Burden (Hours) .....	330,000	0	.....	–9,000	0	339,000
Annual IC Cost Burden (Dollars) .....	127,898,000	0	.....	–4,763,000	0	132,661,000

*Estimated Number of Respondents:*  
804,000.

*Estimated Time per Respondent:* 24.5  
minutes.

*Estimated Total Annual Burden  
Hours:* 330,000.

The number of respondents and  
estimated response time are unchanged  
from the 2016 5500–EZ submission  
approved on December 27, 2016.

*Estimated Number of Respondents:*  
250,000.

*Estimated Time per Respondent:* 27  
hours, 5 minutes.

*Estimated Total Annual Burden  
Hours:* 7,005,000.

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: May 1, 2019.

**Laurie Brimmer,**

*Senior Tax Analyst.*

[FR Doc. 2019–09389 Filed 5–7–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Joint Committee: Correction

**AGENCY:** Internal Revenue Service (IRS)  
Treasury.

**ACTION:** Notice of meeting: Correction.

**SUMMARY:** In the **Federal Register** notice  
that was originally published on April  
24, 2019, (Volume 84, Number 79, Page  
17240) the meeting time has changed  
from 1:00 p.m. to 1:30 p.m. Eastern  
Standard Time.

**DATES:** The meeting will be held  
Thursday, May 30, 2019.

**FOR FURTHER INFORMATION CONTACT:**  
Gilbert Martinez at 1–888–912–1227 or  
(737) 800–4060.

**SUPPLEMENTARY INFORMATION:** Notice is  
hereby given pursuant to Section  
10(a)(2) of the Federal Advisory  
Committee Act, 5 U.S.C. App. (1988)  
that an open meeting of the Taxpayer  
Advocacy Panel Joint Committee will be  
held Thursday, May 30, 2019, at 1:30  
p.m. Eastern Time via teleconference.  
The public is invited to make oral  
comments or submit written statements  
for consideration. For more information  
please contact Gilbert Martinez at  
1–888–912–1227 or (737–800–4060), or  
write TAP Office 3651 S. IH–35, STOP  
1005 AUSC, Austin, TX 78741, or post  
comments to the website: <http://www.improveirs.org>.

The agenda will include various  
committee issues for submission to the  
IRS and other TAP related topics. Public  
input is welcomed.

Dated: May 2, 2019.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2019–09387 Filed 5–7–19; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Open Meeting of the Taxpayer Advocacy Panel Joint Committee: Correction

**AGENCY:** Internal Revenue Service (IRS),  
Treasury.

**ACTION:** Notice of meeting: Correction.

**SUMMARY:** In the **Federal Register** notice  
that was originally published on April  
24, 2019, (Volume 84, Number 79, Page  
17240) the meeting time has changed  
from 1:00 p.m. to 1:30 p.m. Eastern  
Standard Time.

**DATES:** The meeting will be held  
Thursday, April 25, 2019.

**FOR FURTHER INFORMATION CONTACT:**  
Gilbert Martinez at 1–888–912–1227 or  
(737) 800–4060.

**SUPPLEMENTARY INFORMATION:** Notice is  
hereby given pursuant to Section  
10(a)(2) of the Federal Advisory  
Committee Act, 5 U.S.C. App. (1988)  
that an open meeting of the Taxpayer  
Advocacy Panel Joint Committee will be  
held Thursday, April 25, 2019, at 1:30  
p.m. Eastern Time via teleconference.  
The public is invited to make oral  
comments or submit written statements  
for consideration. For more information  
please contact Gilbert Martinez at 1–  
888–912–1227 or (737–800–4060), or  
write TAP Office 3651 S. IH–35, STOP  
1005 AUSC, Austin, TX 78741, or post  
comments to the website: <http://www.improveirs.org>.

The agenda will include various  
committee issues for submission to the  
IRS and other TAP related topics. Public  
input is welcomed.

Dated: May 2, 2019.

**Kevin Brown,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. 2019–09384 Filed 5–7–19; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF VETERANS AFFAIRS****[OMB Control Number 2900–New]****Agency Information Collection Activity: Service Level Measurement—VBA Contact Center Survey****AGENCY:** Veterans Experience Office, Department of Veterans Affairs.**ACTION:** Notice.

**SUMMARY:** The Veterans Experience Office (VEO), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before July 8, 2019.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to *Michael Jacobsen*, Veterans Experience Office, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to [michael.jacobsen2@va.gov](mailto:michael.jacobsen2@va.gov). Please refer to “Service Level Measurement—VBA Contact Center Survey” in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Danny S. Green at (202) 421–1354.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VEO invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VEO’s functions, including whether the information will have practical utility; (2) the accuracy of VEO’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the

collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* OMB Circular A–11 (2018), Section 280.

*Title:* Service Level Measurement—VBA Contact Center Survey.

*OMB Control Number:* 2900–New.

*Type of Review:* New collection.

*Abstract:* The Enterprise Measurement and Design team (EMD) team is tasked with conducting transactional surveys of the Veteran population to measure their satisfaction with the Department of Veterans Affairs (VA) numerous services. Thus, their mission is to empower Veterans by rapidly collecting feedback on their interactions with such VA entities as NCA, VHA, and VBA.

The Veteran Benefits Administration (VBA) oversees numerous government programs supporting Veterans, including those furthering their education or filing for pension benefits. These programs engage Veterans through the National Call Center (NCC) or other benefit-specific call centers. The Veterans Experience Office (VEO) was procured by VBA to measure the customer satisfaction of persons contacting the following call centers: NCC, Pension, and Education.

Customer experience and satisfaction are usually measured at three levels: the enterprise level, the service level patterns, and point-of-service feedback. This measurement may bring insights and value to all stakeholders at VA. Front-line VA leaders can resolve individual feedback from Veterans and take steps to improve the customer experience; meanwhile VA executives can receive real-time updates on systematic trends that allow them to make changes.

(1) To collect continuous customer experience data that make or break the service experience.

(2) To help field staff and the national office identify areas of improvement.

(3) To understand emerging drivers and detractors of customer experience.

To accomplish this task, the VEO will invite random samples of recent callers to these call centers via email to complete a brief transactional online survey. Samples will be drawn three times a week to ensure that callers can accurately respond to their most recent call. The selected callers are given two weeks to respond to the survey, receiving an email reminding them about the survey invitation if they did not respond one week after the initial

email. Sampled callers will report their experiences through Likert-scale questions designed to measure the customer experience driver metrics published by OMB in the A–11 Budget Directive. Sampled callers will also be asked to respond to an open-ended question about their experience with the VBA Contact Centers that will allow them to provide any further information about their experience that was not captured in the previous questions. Once data collection is completed, the participant responses in the online survey will be weighted so that the samples represent the caller population. Weighting models will rely on the following: Call Center Type and Subsidiary Call Center (NCC only). Weighted estimates will be published through dashboards on the Veteran Signals (VSignals) system for interactive reporting and data visualization.

This data collection was previously approved and conducted under the VA Generic Clearance Number 2900–0770: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. Under this clearance, the VEO could collect and report this data to stakeholders internal to VA for program and procedure improvement. However, the stakeholders directed VEO to present the results that are statistically rigorous and generalizable to the target population from this survey to the public, which was not allowed under Generic Clearance Number 2900–0770.

Therefore, the VEO is creating a new information collection request to be able to meet the quantitative goals of the VBA Contact Center Survey of 1) being representative of the VBA Contact Center population and 2) allow for accurate statistical analysis and to allow it to be released to the public.

*Affected Public:* Individuals.

*Estimated Annual Burden:* 1,957 hours.

*Estimated Average Burden per Respondent:* 2 minutes.

*Estimated Average Cost per Respondent:* \$0.74.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 58,712.

By direction of the Secretary.

**Danny S. Green,**

*Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.*

[FR Doc. 2019–09243 Filed 5–7–19; 8:45 am]

**BILLING CODE 8320–01–P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900–NEW]

**Agency Information Collection Activity Under OMB Review: Creating Options for Veterans Expedited Recovery (COVER) Commission Veterans Focus Groups: Mental Health Services Preferences and Utilization Data Collection****AGENCY:** Veterans Health Administration, Department of Veterans Affairs.**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 7, 2019.

**ADDRESSES:** Submit written comments on the collection of information through [www.Regulations.gov](http://www.Regulations.gov), or to Office of

Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov). Please refer to “OMB Control No. 2900–NEW” in any correspondence.

**FOR FURTHER INFORMATION CONTACT:**

Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email [danny.green2@va.gov](mailto:danny.green2@va.gov). Please refer to “OMB Control No. 2900–NEW” in any correspondence.

**SUPPLEMENTARY INFORMATION:**

*Authority:* 44 U.S.C. 3501–21.

*Title:* Creating Options for Veterans Expedited Recovery (COVER) Commission Veterans Focus Groups: Mental Health Services Preferences and Utilization Data Collection.

*OMB Control Number:* 2900–NEW.

*Type of Review:* New collection.

*Abstract:* The COVER Commission was established under the Comprehensive Addiction and Recovery Act of 2016 (CARA). Pursuant to Section 931(b)(2) of the CARA legislation, the COVER Commission is directed to conduct a patient-centered survey within each of the Veterans Integrated Service Networks. The survey will

collect qualitative and demographic information from Veterans seeking and utilizing mental health services through VA and non-VA facilities. The findings will be compiled in a final report to the President, the Committees on Veterans’ Affairs of the House of Representatives and the Senate, and the Secretary of Veterans Affairs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 8153 on March 6, 2019, page 8153.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 400 hours.

*Estimated Average Burden per Respondent:* 120 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 200.

By direction of the Secretary.

**Danny S. Green,**

*Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.*

[FR Doc. 2019–09424 Filed 5–7–19; 8:45 am]

**BILLING CODE 8320–01–P**



# FEDERAL REGISTER

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Vol. 84

Wednesday,

No. 89

May 8, 2019

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Part II

## Environmental Protection Agency

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40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands Residual Risk and Technology Review; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

[EPA-HQ-OAR-2018-0753; FRL-9993-20-OAR]

RIN 2060-AT01

**National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Standards Residual Risk and Technology Review**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing the results of the residual risk and technology reviews (RTR) for the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Engine Test Cells/Standards. We found risks due to emissions of air toxics from this source category to be acceptable and determined that the current NESHAP provides an ample margin of safety to protect public health. We identified no new cost-effective controls under the technology review to achieve further emission reductions. We are proposing no revisions to the numerical emission limit based on the risk analysis and technology review. We are proposing to amend provisions addressing periods of startup, shutdown, and malfunction (SSM), to amend provisions regarding electronic reporting and to make clarifying and technical corrections.

**DATES:** *Comments.* Comments must be received on or before June 24, 2019. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 7, 2019.

*Public hearing.* If anyone contacts us requesting a public hearing on or before May 13, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at <https://www.epa.gov/stationary-sources-air-pollution/engine-test-cellsstands-national-emission-standards-hazardous-air>. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2018-0753, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our

preferred method). Follow the online instructions for submitting comments.

- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov). Include Docket ID No. EPA-HQ-OAR-2018-0753 in the subject line of the message.

- *Fax:* (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2018-0753.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA-HQ-OAR-2018-0753, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.-4:30 p.m., Monday-Friday (except Federal holidays).

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

**FOR FURTHER INFORMATION CONTACT:** For questions about this proposed action, contact Jim Eddinger, Sector Policies and Programs Division (Mail Code D243-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5426; fax number: (919) 541-4991; and email address: [edding.jim@epa.gov](mailto:edding.jim@epa.gov). For specific information regarding the risk modeling methodology, contact Ted Palma, 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) 541-5470; fax number: (919) 541-0840; and email address: [palma.ted@epa.gov](mailto:palma.ted@epa.gov). For questions about monitoring and testing requirements, contact Kevin McGinn, Sector Policies and Programs Division (Mail Code D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-3796; fax number: (919) 541-4991; and email address: [mcginn.kevin@epa.gov](mailto:mcginn.kevin@epa.gov). For information about the applicability of the national emissions standards for hazardous air pollutants (NESHAP) to a particular entity, contact Sara Ayres,

Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, USEPA Region 5 (Mail Code E-19), 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 353-6266; and email address: [ayres.sara@epa.gov](mailto:ayres.sara@epa.gov).

**SUPPLEMENTARY INFORMATION:**

*Public hearing.* Please contact Adrian Gates at (919) 541-4860 or by email at [gates.adrian@epa.gov](mailto:gates.adrian@epa.gov) to request a public hearing, to register to speak at the public hearing, or to inquire as to whether a public hearing will be held.

*Docket.* The EPA has established a docket for this rulemaking under Docket ID No. EPA-HQ-OAR-2018-0753. All documents in the docket are listed in [Regulations.gov](https://www.regulations.gov). Although listed, some information is not publicly available, e.g., CBI (Confidential Business Information) 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. Publicly available docket materials are available either electronically in [Regulations.gov](https://www.regulations.gov) or in hard copy at the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue 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 EPA Docket Center is (202) 566-1742.

*Instructions.* Direct your comments to Docket ID No. EPA-HQ-OAR-2018-0753. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov/>, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov/> or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. 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>.

The <https://www.regulations.gov/> website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through <https://www.regulations.gov/>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <https://www.epa.gov/dockets>.

**Submitting CBI.** Do not submit information containing CBI to the EPA through <https://www.regulations.gov/> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following

address: OAQPS Document Control Officer (C404-02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA-HQ-OAR-2018-0753.

**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:

AEGL acute exposure guideline level  
 AERMOD air dispersion model used by the HEM-3 model  
 ATSDR Agency for Toxic Substances and Disease Registry  
 BACT best available control technology  
 CAA Clean Air Act  
 CalEPA California EPA  
 CBI Confidential Business Information  
 CDX Central Data Exchange  
 CEDRI Compliance and Emissions Data Reporting Interface  
 CFR Code of Federal Regulations  
 CO carbon monoxide  
 DoD Department of Defense  
 ECHO Enforcement and Compliance History Online  
 EPA Environmental Protection Agency  
 ERPG Emergency Response Planning Guideline  
 ERT Electronic Reporting Tool  
 HAP hazardous air pollutant(s)  
 HCl hydrochloric acid  
 HEM-3 Human Exposure Model, Version 1.1.0  
 HF hydrogen fluoride  
 HI hazard index  
 hp horsepower  
 HQ hazard quotient  
 IRIS Integrated Risk Information System  
 km kilometer  
 LAER lowest achievable emissions rate  
 MACT maximum achievable control technology  
 MIR maximum individual risk  
 NAAQS National Ambient Air Quality Standards  
 NAICS North American Industry Classification System  
 NASA National Aeronautics and Space Administration  
 NEI National Emission Inventory  
 NESHAP national emission standards for hazardous air pollutants  
 OAQPS Office of Air Quality Planning and Standards  
 OMB Office of Management and Budget  
 PB-HAP hazardous air pollutants known to be persistent and bio-accumulative in the environment  
 PM<sub>10</sub> particulate matter with particles less than 10 micrometers in diameter  
 POM polycyclic organic matter  
 ppmvd parts per million by volume dry basis  
 RACT reasonably available control technology  
 REL reference exposure level  
 RFA Regulatory Flexibility Act  
 RfC reference concentration  
 RfD reference dose

RTR residual risk and technology review  
 SAB Science Advisory Board  
 SCC Source Classification Code  
 SSM startup, shutdown, and malfunction  
 THC total hydrocarbons  
 TOSHI target organ-specific hazard index  
 tpy tons per year  
 TRIM.FaTE Total Risk Integrated Methodology.Fate, Transport, and Ecological Exposure model  
 UF uncertainty factor  
 µg/m<sup>3</sup> microgram per cubic meter  
 UMRA Unfunded Mandates Reform Act  
 URE unit risk estimate  
 VOC volatile organic compounds

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

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

**I. General Information**

*A. Does this action apply to me?*

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As

defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576; July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030, July 1992), the “Engine Test Facilities” source category is any facility engaged in the testing of stationary and mobile engines, including turbines and reciprocating engines. Test cells/stands used for testing rocket engines were identified as an additional subcategory during the NESHAP rulemaking.

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

Source category	NESHAP	NAICS code <sup>1</sup>
Engine Test Facilities	Engine Test Cells/Standards	333120, 333618, 333111, 334312, 336111, 336120, 336112, 336992, 336312, 336350, 54171, 541380, 333611, 336411, 336412, 336414, 92711.

<sup>1</sup> North American Industry Classification System.

*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 action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at <https://www.epa.gov/stationary-sources-air-pollution/engine-test-cellsstands-national-emission-standards-hazardous-air>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal and key technical documents at this same website. Information on the overall RTR program is available at <https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html>.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2018-0753).

**II. Background**

A. What is the statutory authority for this action?

The statutory authority for this action is provided by sections 112 and 301 of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*). Section 112 of the CAA establishes a two-stage regulatory process to develop standards for emissions of hazardous air pollutants (HAP) from stationary sources. Generally, the first stage involves establishing technology-based standards and the second stage involves evaluating those standards that are based on maximum achievable control technology (MACT) to determine whether additional standards are

needed to address any remaining risk associated with HAP emissions. This second stage is commonly referred to as the “residual risk review.” In addition to the residual risk review, the CAA also requires the EPA to review standards set under CAA section 112 every 8 years to determine if there are “developments in practices, processes, or control technologies” that may be appropriate to incorporate into the standards. This review is commonly referred to as the “technology review.” When the two reviews are combined into a single rulemaking, it is commonly referred to as the “risk and technology review.” The discussion that follows identifies the most relevant statutory sections and briefly explains the contours of the methodology used to implement these statutory requirements. A more comprehensive discussion appears in the document titled *CAA Section 112 Risk and Technology Reviews: Statutory Authority and Methodology*, in the docket for this rulemaking.

In the first stage of the CAA section 112 standard setting process, the EPA promulgates technology-based standards under CAA section 112(d) for categories of sources identified as emitting one or more of the HAP listed in CAA section 112(b). Sources of HAP emissions are either major sources or area sources, and CAA section 112 establishes different requirements for major source standards and area source standards. “Major sources” are those that emit or have the potential to emit 10 tons per year (tpy) or more of a single HAP or 25 tpy or more of any combination of HAP. All other sources are “area sources.” For major sources, CAA section 112(d)(2)

provides that the technology-based NESHAP must reflect the maximum degree of emission reductions of HAP achievable (after considering cost, energy requirements, and non-air quality health and environmental impacts). These standards are commonly referred to as MACT standards. CAA section 112(d)(3) also establishes a minimum control level for MACT standards, known as the MACT “floor.” The EPA must also consider control options that are more stringent than the floor. Standards more stringent than the floor are commonly referred to as beyond-the-floor standards. In certain instances, as provided in CAA section 112(h), the EPA may set work practice standards where it is not feasible to prescribe or enforce a numerical emission standard. For area sources, CAA section 112(d)(5) gives the EPA discretion to set standards based on generally available control technologies or management practices (GACT standards) in lieu of MACT standards.

The second stage in standard-setting focuses on identifying and addressing any remaining (*i.e.*, “residual”) risk according to CAA section 112(f). For source categories subject to MACT standards, section 112(f)(2) of the CAA requires the EPA to determine whether promulgation of additional standards is needed to provide an ample margin of safety to protect public health or to prevent an adverse environmental effect. Section 112(d)(5) of the CAA provides that this residual risk review is not required for categories of area sources subject to GACT standards. Section 112(f)(2)(B) of the CAA further expressly preserves the EPA’s use of the

two-step approach for developing standards to address any residual risk and the Agency's interpretation of "ample margin of safety" developed in the *National Emissions Standards for Hazardous Air Pollutants: Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants* (Benzene NESHAP) (54 FR 38044, September 14, 1989). The EPA notified Congress in the Risk Report that the Agency intended to use the Benzene NESHAP approach in making CAA section 112(f) residual risk determinations (EPA-453/R-99-001, p. ES-11). The EPA subsequently adopted this approach in its residual risk determinations and the United States Court of Appeals for the District of Columbia Circuit (the Court) upheld the EPA's interpretation that CAA section 112(f)(2) incorporates the approach established in the Benzene NESHAP. See *NRDC v. EPA*, 529 F.3d 1077, 1083 (D.C. Cir. 2008).

The approach incorporated into the CAA and used by the EPA to evaluate residual risk and to develop standards under CAA section 112(f)(2) is a two-step approach. In the first step, the EPA determines whether risks are acceptable. This determination "considers all health information, including risk estimation uncertainty, and includes a presumptive limit on maximum individual lifetime [cancer] risk (MIR)<sup>1</sup> of approximately 1 in 10 thousand." 54 FR 38045, September 14, 1989. If risks are unacceptable, the EPA must determine the emissions standards necessary to reduce risk to an acceptable level without considering costs. In the second step of the approach, the EPA considers whether the emissions standards provide an ample margin of safety to protect public health "in consideration of all health information, including the number of persons at risk levels higher than approximately 1 in 1 million, as well as other relevant factors, including costs and economic impacts, technological feasibility, and other factors relevant to each particular decision." *Id.* The EPA must promulgate emission standards necessary to provide an ample margin of safety to protect public health. After conducting the ample margin of safety analysis, we consider whether a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety,

and other relevant factors, an adverse environmental effect.

CAA section 112(d)(6) separately requires the EPA to review standards promulgated under CAA section 112 and revise them "as necessary (taking into account developments in practices, processes, and control technologies)" no less often than every 8 years. In conducting this review, which we call the "technology review," the EPA is not required to recalculate the MACT floor. *Natural Resources Defense Council (NRDC) v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008). *Association of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667 (D.C. Cir. 2013). The EPA may consider cost in deciding whether to revise the standards pursuant to CAA section 112(d)(6).

*B. What is this source category and how does the current NESHAP regulate its HAP emissions?*

The NESHAP for the Engine Test Cells/Stands source category was promulgated on May 27, 2003 (68 FR 28774), and codified at 40 CFR part 63, subpart P. As promulgated in 2003, the Engine Test Cells/Stands NESHAP applies to engine test cells/stands located at major sources of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile engines. That is, the NESHAP regulates the testing of engines, not the testing of any final product (e.g., automobile, boat, or power generator). Engine test cells/stands are used for research and development activities (e.g., new model development, endurance testing) and for quality control at engine production facilities. The affected source is defined in the NESHAP as the collection of all equipment and activities associated with engine test cells/stands used for testing uninstalled engines. The NESHAP does not apply to any portion of the affected source used in research and teaching activities at facilities that are not engaged in the development of engines or engine test services for commercial purposes or any portion of the affected source operated to test or evaluate fuels, transmissions, or electronics.

The NESHAP covers four subcategories of engine test cells/stands: (1) Cells/stands used for testing internal combustion engines with rated power of 25 horsepower (hp) or more; (2) cells/stands used for testing internal combustion engines with rated power of less than 25 hp; (3) cells/stands used for testing combustion turbine engines; and (4) cells/stands used for testing rocket engines. The first two subcategories

cover facilities where reciprocating engines are tested, such as automobile engines and emergency generators. The combustion turbine subcategory includes jet engines, turboprops, and gas turbines.

The affected source is further classified as either an existing, new, or reconstructed source. An affected source is said to be "existing" if its construction began on or before May 14, 2002, and no reconstruction of the source occurred after that date. An affected source is considered "new" or "reconstructed" if it was constructed or reconstructed after May 14, 2002. The distinction between "existing" and "new/reconstructed" affected sources is important as existing affected sources testing engines are not subject to emission limits. However, new and reconstructed affected sources testing internal combustion engines with a rated power of 25 hp or more are subject to emission limits.

The typical engine test cell consists of one or more stands for mounting engines, storage tanks, and piping for fuels and cooling fluids, an electronic control system, data acquisition instrumentation for monitoring and recording engine parameters during testing, blast panels, fire suppression equipment, and spill collection systems. Most engine testing is performed indoors in a purpose-built enclosure equipped with ventilation systems with hoods, ducts, and fans. However, testing of jet engines, turboprops, large turbines, and rocket engines is sometimes conducted on outdoor test stands. Some test cells/stands include climate control systems that enable testing to be completed under a variety of temperature, humidity, and pressure conditions. Test cells used for aircraft engines and rockets sometimes include specially designed air handling systems that simulate high altitude conditions. Most sources have between two and 10 engine test cells/stands. However, a few larger sources have over 100 test cells.

Engine test cells/stands emit HAP in the exhaust gases from combustion of gaseous and liquid fuels in the engines tested. The emission rates and annual emissions vary based on the size and design of the engines tested, the types of fuels burned, and the number, type, and duration of tests performed. A wide range of engines are tested in the U.S., including two- and four-stroke reciprocating engines used in boats, automobiles, buses, and trucks; combustion turbines used for power generation; jet and turboprop engines used in military and civilian aircraft; and rocket engines used in a variety of military and civilian applications. Fuels

<sup>1</sup> Although defined as "maximum individual risk," MIR refers only to cancer risk. MIR, one metric for assessing cancer risk, is the estimated risk if an individual were exposed to the maximum level of a pollutant for a lifetime.

used during testing include biofuels, natural gas, propane, gasoline, kerosene, jet fuel, diesel, and various grades of fuel oil.

The sources of emissions are the exhaust gases from combustion of fuels in the engines being tested in the test cells/stands. The primary HAP present in the exhaust gases from engine test cells/stands are formaldehyde, benzene, acetaldehyde, and 1,3-butadiene.

The Engine Test Cells/Standards NESHAP provides the owner or operator of a new or reconstructed affected source used in whole or in part for testing internal combustion engines with rated power of 25 hp or more and located at a major source of HAP emissions two compliance options: (1) Reduce carbon monoxide (CO) or total hydrocarbons (THC) emissions in the exhaust from the new or reconstructed affected source to 20 parts per million by volume dry basis (ppmvd) or less, at 15-percent oxygen (O<sub>2</sub>) content, or (2) reduce CO or THC emissions in the exhaust from the new or reconstructed affected source by 96 percent or more. If a new affected source elects to comply with the percent reduction emission limitation, the affected source must conduct an initial performance test to determine the capture and control efficiencies of the equipment and to establish operating limits to be achieved on a continuous basis.

#### C. What data collection activities were conducted to support this action?

During the development of 40 CFR part 63, subpart P, the EPA collected information on the emissions, operations, and location of engine test cells/stands. Since this information was collected prior to the 2003 promulgation of 40 CFR part 63, subpart P, the EPA prepared a questionnaire in 2016 in order to collect current information on the location and number of engine test cells/stands, types and quantities of emissions, number and type of engines tested, length and purpose of tests, annual operating hours, types and quantities of fuels burned, and information on air pollution control devices and emission points. Ten companies completed the 2016 questionnaire for which they reported data for 15 major source facilities. The EPA used data from the 2016 questionnaires to develop the modeling dataset for the 40 CFR part 63, subpart P risk modeling.

The list of facilities that are subject to 40 CFR part 63, subpart P was developed using EPA's Enforcement and Compliance History Online (ECHO) database, the 2014 National Emissions Inventory (2014 NEI) and the facility list

developed for the 2003 promulgation of 40 CFR part 63, subpart P.

Facilities with engine test cells/stands were identified in the 2014 NEI records by either the source classification codes (SCCs) or NAICS codes. The facility list was then refined using air permit information to determine whether the facility was a major source of HAP and subject to 40 CFR part 63, subpart P. The initial list of facilities and their engine test cells/stands was posted to the EPA's *Engine Test Cells/Standards: National Emission Standards for Hazardous Air Pollutants (NESHAP)* website for review by industry and trade organizations.<sup>2</sup> The EPA also emailed the list to several trade organizations as part of an outreach effort to the industry. EPA Regional offices and state and local air pollution control agencies were asked to review the list and provide corrections as necessary. The Department of Defense (DoD) and the National Aeronautics and Space Administration (NASA) were also consulted and provided information for engine testing facilities located at research sites and military bases. Changes to the facility list were made based on the new information received. The final risk modeling datafile included all 59 facilities, each with one or more engine test cells/stands that are in the source category, not just the engine test cells/stands facilities that are subject to emission limits.

#### D. What other relevant background information and data are available?

In addition to the ECHO and NEI databases, the EPA reviewed the additional information sources listed below and consulted with stakeholders regulated under the Engine Test Cells/Standards NESHAP to determine whether there have been developments in practices, processes, or control technologies by engine testing sources. These include the following:

- Permit limits and selected compliance options from permits submitted by facilities as part of their response to the questionnaire and collected from state agencies;
- Information on air pollution control options in the engine testing industry from the reasonably available control technology/best available control technology/lowest achievable emission rate Clearinghouse (RBLIC);
- Information on the most effective ways to control emissions of volatile organic compounds (VOC) and organic

HAP from sources in various industries; and

- Communication with trade groups and associations representing industries in the affected NAICS categories and their members.

### III. Analytical Procedures and Decision-Making

In this section, we describe the analyses performed to support the proposed decisions for the RTR and other issues addressed in this proposal.

#### A. How do we consider risk in our decision-making?

As discussed in section II.A of this preamble and in the Benzene NESHAP, in evaluating and developing standards under CAA section 112(f)(2), we apply a two-step approach to determine whether or not risks are acceptable and to determine if the standards provide an ample margin of safety to protect public health. As explained in the Benzene NESHAP, "the first step judgment on acceptability cannot be reduced to any single factor" and, thus, "[t]he Administrator believes that the acceptability of risk under section 112 is best judged on the basis of a broad set of health risk measures and information." 54 FR 38046, September 14, 1989. Similarly, with regard to the ample margin of safety determination, "the Agency again considers all of the health risk and other health information considered in the first step. Beyond that information, additional factors relating to the appropriate level of control will also be considered, including cost and economic impacts of controls, technological feasibility, uncertainties, and any other relevant factors." *Id.*

The Benzene NESHAP approach provides flexibility regarding factors the EPA may consider in making determinations and how the EPA may weigh those factors for each source category. The EPA conducts a risk assessment that provides estimates of the MIR posed by the HAP emissions from each source in the source category, the hazard index (HI) for chronic exposures to HAP with the potential to cause noncancer health effects, and the hazard quotient (HQ) for acute exposures to HAP with the potential to cause noncancer health effects.<sup>3</sup> The assessment also provides estimates of the distribution of cancer risk within the

<sup>3</sup> The MIR is defined as the cancer risk associated with a lifetime of exposure at the highest concentration of HAP where people are likely to live. The HQ is the ratio of the potential exposure to the HAP to the level at or below which no adverse chronic noncancer effects are expected; the HI is the sum of HQs for HAP that affect the same target organ or organ system.

<sup>2</sup> See <https://www.epa.gov/stationary-sources-air-pollution/engine-test-cellsstands-national-emission-standards-hazardous-air#rule-summary>.

exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The scope of the EPA's risk analysis is consistent with the EPA's response to comments on our policy under the Benzene NESHAP where the EPA explained that:

[t]he policy chosen by the Administrator permits consideration of multiple measures of health risk. Not only can the MIR figure be considered, but also incidence, the presence of non-cancer health effects, and the uncertainties of the risk estimates. In this way, the effect on the most exposed individuals can be reviewed as well as the impact on the general public. These factors can then be weighed in each individual case. This approach complies with the *Vinyl Chloride* mandate that the Administrator ascertain an acceptable level of risk to the public by employing his expertise to assess available data. It also complies with the Congressional intent behind the CAA, which did not exclude the use of any particular measure of public health risk from the EPA's consideration with respect to CAA section 112 regulations, and thereby implicitly permits consideration of any and all measures of health risk which the Administrator, in his judgment, believes are appropriate to determining what will 'protect the public health'.

See 54 FR 38057, September 14, 1989. Thus, the level of the MIR is only one factor to be weighed in determining acceptability of risk. The Benzene NESHAP explained that "an MIR of approximately one in 10 thousand should ordinarily be the upper end of the range of acceptability. As risks increase above this benchmark, they become presumptively less acceptable under CAA section 112, and would be weighed with the other health risk measures and information in making an overall judgment on acceptability. Or, the Agency may find, in a particular case, that a risk that includes an MIR less than the presumptively acceptable level is unacceptable in the light of other health risk factors." *Id.* at 38045. Similarly, with regard to the ample margin of safety analysis, the EPA stated in the Benzene NESHAP that: "EPA believes the relative weight of the many factors that can be considered in selecting an ample margin of safety can only be determined for each specific source category. This occurs mainly because technological and economic factors (along with the health-related factors) vary from source category to source category." *Id.* at 38061. We also consider the uncertainties associated with the various risk analyses, as discussed earlier in this preamble, in our determinations of acceptability and ample margin of safety.

The EPA notes that it has not considered certain health information to

date in making residual risk determinations. At this time, we do not attempt to quantify the HAP risk that may be associated with emissions from other facilities that do not include the source category under review, mobile source emissions, natural source emissions, persistent environmental pollution, or atmospheric transformation in the vicinity of the sources in the category.

The EPA understands the potential importance of considering an individual's total exposure to HAP in addition to considering exposure to HAP emissions from the source category and facility. We recognize that such consideration may be particularly important when assessing noncancer risk, where pollutant-specific exposure health reference levels (*e.g.*, reference concentrations (RfCs)) are based on the assumption that thresholds exist for adverse health effects. For example, the EPA recognizes that, although exposures attributable to emissions from a source category or facility alone may not indicate the potential for increased risk of adverse noncancer health effects in a population, the exposures resulting from emissions from the facility in combination with emissions from all of the other sources (*e.g.*, other facilities) to which an individual is exposed may be sufficient to result in an increased risk of adverse noncancer health effects. In May 2010, the Science Advisory Board (SAB) advised the EPA "that RTR assessments will be most useful to decision makers and communities if results are presented in the broader context of aggregate and cumulative risks, including background concentrations and contributions from other sources in the area."<sup>4</sup>

In response to the SAB recommendations, the EPA incorporates cumulative risk analyses into its RTR risk assessments, including those reflected in this proposal. The Agency (1) conducts facility-wide assessments, which include source category emission points, as well as other emission points within the facilities; (2) combines exposures from multiple sources in the same category that could affect the same individuals; and (3) for some persistent and bioaccumulative pollutants, analyzes the ingestion route of exposure. In addition, the RTR risk assessments consider aggregate cancer risk from all carcinogens and aggregated noncancer HQs for all noncarcinogens

<sup>4</sup> Recommendations of the SAB RTR Panel are provided in their report, which is available at: [https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/\\$File/EPA-SAB-10-007-unsigned.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/4AB3966E263D943A8525771F00668381/$File/EPA-SAB-10-007-unsigned.pdf).

affecting the same target organ or target organ system.

Although we are interested in placing source category and facility-wide HAP risk in the context of total HAP risk from all sources combined in the vicinity of each source, we are concerned about the uncertainties of doing so. Estimates of total HAP risk from emission sources other than those that we have studied in depth during this RTR review would have significantly greater associated uncertainties than the source category or facility-wide estimates. Such aggregate or cumulative assessments would compound those uncertainties, making the assessments too unreliable.

#### *B. How do we perform the technology review?*

Our technology review focuses on the identification and evaluation of developments in practices, processes, and control technologies that have occurred since the MACT standards were promulgated. Where we identify such developments, we analyze their technical feasibility, estimated costs, energy implications, and non-air environmental impacts. We also consider the emission reductions associated with applying each development. This analysis informs our decision of whether it is "necessary" to revise the emissions standards. In addition, we consider the appropriateness of applying controls to new sources versus retrofitting existing sources. For this exercise, we consider any of the following to be a "development":

- Any add-on control technology or other equipment that was not identified and considered during development of the original MACT standards;
- Any improvements in add-on control technology or other equipment (that were identified and considered during development of the original MACT standards) that could result in additional emissions reduction;
- Any work practice or operational procedure that was not identified or considered during development of the original MACT standards;
- Any process change or pollution prevention alternative that could be broadly applied to the industry and that was not identified or considered during development of the original MACT standards; and
- Any significant changes in the cost (including cost effectiveness) of applying controls (including controls the EPA considered during the development of the original MACT standards).

In addition to reviewing the practices, processes, and control technologies that were considered at the time we originally developed the NESHAP, we review a variety of data sources in our investigation of potential practices, processes, or controls to consider. See sections II.C and II. D of this preamble for information on the specific data sources that were reviewed as part of the technology review.

### C. How do we estimate post-MACT risk posed by the source category?

In this section, we provide a complete description of the types of analyses that we generally perform during the risk assessment process. In some cases, we do not perform a specific analysis because it is not relevant. For example, in the absence of emissions of HAP known to be persistent and bioaccumulative in the environment (PB-HAP), we would not perform a multipathway exposure assessment. Where we do not perform an analysis, we state that we do not and provide the reason. While we present all of our risk assessment methods, we only present risk assessment results for the analyses actually conducted (see section IV.B of this preamble).

The EPA conducts a risk assessment that provides estimates of the MIR for cancer posed by the HAP emissions from each source in the source category, the HI for chronic exposures to HAP with the potential to cause noncancer health effects, and the HQ for acute exposures to HAP with the potential to cause noncancer health effects. The assessment also provides estimates of the distribution of cancer risk within the exposed populations, cancer incidence, and an evaluation of the potential for an adverse environmental effect. The seven sections that follow this paragraph describe how we estimated emissions and conducted the risk assessment. The docket for this rulemaking contains the following document which provides more information on the risk assessment inputs and models: *Residual Risk Assessment for the Engine Test Cells/ Stands Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*. The methods used to assess risk (as described in the seven primary steps below) are consistent with those described by the EPA in the document reviewed by a panel of the EPA's SAB in 2009;<sup>5</sup> and described in

<sup>5</sup> U.S. EPA. *Risk and Technology Review (RTR) Risk Assessment Methodologies: For Review by the EPA's Science Advisory Board with Case Studies—MACT I Petroleum Refining Sources and Portland Cement Manufacturing*, June 2009. EPA-452/R-09-006. <https://www3.epa.gov/airtoxics/rtrsk/rtrpg.html>.

the SAB review report issued in 2010. They are also consistent with the key recommendations contained in that report.

### 1. How did we estimate actual emissions and identify the emissions release characteristics?

The list of facilities that are subject to 40 CFR part 63, subpart P, was developed using the ECHO database, the 2014 NEI and the facility list developed for the promulgation of the 2003 NESHAP. Facilities with engine test cells/stands were identified in the 2014 NEI records by their SCC or NAICS codes. The facility list was then refined using air permit information to determine whether the facility was a major source of HAP and subject to 40 CFR part 63, subpart P. The EPA emailed the list to several trade organizations as part of an outreach effort to the industry. The EPA Regional offices and state and local air pollution control agencies were asked to review the list and provide corrections as necessary. The DoD and NASA were also consulted and provided information for engine testing facilities located at research sites and military bases. Changes to the facility list were made based on the new information received. The final risk modeling datafile included 59 facilities, each with one or more engine test cell/stand. We are interested in your comments on the development of the facility list used in our analysis. For more details on the facility list development, see the memorandum titled *Emissions Data Used for the Engine Test Cells/ Stands Residual Risk Modeling File*, in the docket for this rulemaking (Docket ID No. EPA-HQ-OAR-2018-0753).

To determine which HAP should be modeled, we reviewed NEI emissions data and several other relevant sources to identify the principal HAP emitted.<sup>6,7,8,9</sup> Because the type and quantity of emissions are related to the engine type and fuel combusted, we developed a list of HAP for each engine type and fuel combination. The organic HAP selected for turbines and reciprocating engines are formaldehyde,

<sup>6</sup> Memorandum from Melanie Taylor (Alpha-Gamma Technologies, Inc.) to Sims Roy (U.S. EPA OAQPS), *Emissions Data for Reciprocating Internal Combustion Engines*, February 4, 2002.

<sup>7</sup> *Compilation of Air Pollutant Emissions Factors, AP-42, Fifth Edition, Volume 1: Stationary Point and Area Sources*, U.S. Environmental Protection Agency, Research Triangle Park, NC, January 1995.

<sup>8</sup> *Web Factor and Information Retrieval System (WebFire)*, U.S. Environmental Protection Agency (<https://cfpub.epa.gov/webfire/>).

<sup>9</sup> U.S. EPA SPECIATE Database (version 4.5), available at <https://www.epa.gov/air-emissions-modeling/speciate-version-45-through-40>.

acetaldehyde, acrolein, 1,3-butadiene, benzene, toluene, xylenes, and naphthalene. In addition to these eight listed organic HAP, for diesel-fired turbines and reciprocating engines the following metal HAP compounds were also listed: Arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium. The eight organic HAP were modeled for all test cells/stands used for testing turbines and/or reciprocating engines. Metal HAP emissions are not expected from jet fuel-, kerosene-, naphtha-, natural gas-, or gasoline-fired engines. Hence, metal HAP emissions were included in the modeling file only for test cells/stands testing turbines and reciprocating engines that burn diesel or distillate fuels. Limited emissions information was available for rocket engines. Hence, we modeled only HAP reported to NEI by each of the seven facilities engaged in rocket testing. The HAP modeled varied by facility due to differences in the type of propellant used. The HAP modeled for rocket engine testing included organic HAP, metal HAP, chlorine, hydrogen chloride, and hydrogen fluoride.

We compiled the actual emissions data using the following four-step approach. Step 1—where possible, the actual emissions from the 2014 NEI and the 2016 questionnaires were used for the very few facilities that reported HAP emissions to either NEI or in their completed 2016 questionnaires. For facilities where HAP data were not available from these sources, we proceeded to step 2 (for facilities that submitted 2016 questionnaires) and step 3 for all others.

Step 2—As noted above, facilities that completed the 2016 questionnaire were asked to provide information on the types and quantities of each fuel consumed during engine testing. HAP emissions for these facilities, when not directly reported to NEI or in the questionnaire, were calculated by multiplying the fuel usage reported in the questionnaire by an emission factor. The emission factors used to calculate emissions were obtained from three sources.<sup>10,11,12</sup> Where a reliable emissions factor for a HAP was not available, we calculated emissions of VOC and filterable particulate matter with diameter less than 10 microns (PM<sub>10</sub>) emissions using emission factors, and then used the VOC and PM<sub>10</sub>

<sup>10</sup> *Memorandum on Emissions Data for RICE*, Alpha-Gamma Technologies, Inc. to U.S. EPA, 2002.

<sup>11</sup> *Speciation Profiles and Toxic Emission Factors for Nonroad Engines*, Table 13.

<sup>12</sup> AP-42, Section 3.

emissions values in step 3 to calculate HAP emissions.

Step 3—For those facilities that either reported VOC emissions to the 2014 NEI or for which we were able to calculate VOC emissions using fuel data from the 2016 questionnaire, we calculated organic HAP emissions by multiplying the VOC emissions by a speciation factor. Similarly, the metal HAP emissions were calculated by multiplying the PM<sub>10</sub> emissions (either reported in the 2014 NEI or calculated from 2016 questionnaire data) by a metal HAP speciation factor. The speciation factors used were based on speciation profiles from EPA's SPECIATE database.<sup>13</sup> Where no speciation profiles were available in SPECIATE, we developed speciation factors using AP-42 emission factors. For those engine/fuel combinations where no organic HAP speciation profiles or AP-42 emission factors existed, we developed speciation factors using the average HAP-to-VOC ratio based on the available emissions data for sources operating under the same SCC. The same approach was used to develop metal HAP speciation factors using the average of the HAP-to-PM<sub>10</sub> ratio using the available PM<sub>10</sub> and HAP data for other sources operating under the same SCC.

Step 4—Where data needed for steps 1 through 3 were not available, we based the HAP emissions on either:

(1) The HAP emissions from other similar test cells/stands located at the same facility and operating under the same SCC; or

(2) The HAP emissions from other similar test cells/stands located at a different facility that operate under the same SCC.

An average annual emissions value was used where emissions data for more than one test cell/stand was available.

Mercury emissions were modeled as three different species: Gaseous elemental mercury, gaseous divalent mercury, and particulate divalent mercury. Chromium emissions were modeled as hexavalent chromium and trivalent chromium. We used emissions for total mercury and total chromium determined by using the methods outlined above, in combination with speciation factors from the EPA's SPECIATE, to calculate the emissions of each species. The SPECIATE database contains source-specific, weight-fraction emission speciation profiles. The total mercury emissions were multiplied by the speciation factors of 0.5 for

elemental mercury, 0.30 for gaseous divalent mercury, and 0.20 for particulate divalent mercury. The total chromium emissions were multiplied by speciation factors of 0.18 for hexavalent chromium and 0.82 for trivalent chromium.

## 2. How did we estimate MACT-allowable emissions?

The available emissions data in the RTR emissions dataset include estimates of the mass of HAP emitted during a specified annual time period. These "actual" emission levels are often lower than the emission levels allowed under the requirements of the current MACT standards. The emissions allowed under the MACT standards are referred to as the "MACT-allowable" emissions. We discussed the consideration of both MACT-allowable and actual emissions in the final Coke Oven Batteries RTR (70 FR 19998–19999, April 15, 2005) and in the proposed and final Hazardous Organic NESHAP RTR (71 FR 34428, June 14, 2006, and 71 FR 76609, December 21, 2006, respectively). In those actions, we noted that assessing the risk at the MACT-allowable level is inherently reasonable since that risk reflects the maximum level facilities could emit and still comply with national emission standards. We also explained that it is reasonable to consider actual emissions, where such data are available, in both steps of the risk analysis, in accordance with the Benzene NESHAP approach. (54 FR 38044, September 14, 1989.)

Generally, allowable emissions for risk modeling are set equal to the current emission limits included in the rule. For this NESHAP, however, there are no emission limits for existing engine test cells/stands or for new test cells/stands used for testing combustion turbines, rockets, and internal combustion engines with rated power less than 25 hp. Although there are limits for new and reconstructed engine test cells/stands used to test internal combustion engines rated at 25 hp and above, only seven engine test cells/stands facilities have been constructed or reconstructed since the NESHAP was proposed in 2002. Thus, 52 of the 59 affected facilities are not subject to emission limits. Because most engine test cells/stands are not subject to emission limits and the emissions from engine test cells/stands can be variable, we have taken a conservative approach to estimating the allowable emissions for this source category. We estimated the allowable emissions at 4.5 times the actual emissions that were determined using the methods as described in section III.C.1 of this preamble. The 4.5

multiplier was determined based on data provided by facilities responding to our 2016 questionnaire that showed most facilities operate their engine test cells/stands at slightly less than 50 percent of their maximum potential. By setting the allowable multiplier at half the acute multiplier of 9.5, the estimated allowable emissions included in the modeling datafile are conservative estimates that take into consideration the potential variability in emissions from this source category.

## 3. How do we conduct dispersion modeling, determine inhalation exposures, and estimate individual and population inhalation risk?

Both long-term and short-term inhalation exposure concentrations and health risk from the source category addressed in this proposal were estimated using the Human Exposure Model (HEM-3).<sup>14</sup> The HEM-3 performs three primary risk assessment activities: (1) Conducting dispersion modeling to estimate the concentrations of HAP in ambient air; (2) estimating long-term and short-term inhalation exposures to individuals residing within 50 kilometers (km) of the modeled sources; and (3) estimating individual and population-level inhalation risk using the exposure estimates and quantitative dose-response information.

### a. Dispersion Modeling

The air dispersion model AERMOD, used by the HEM-3 model, is one of the EPA's preferred models for assessing air pollutant concentrations from industrial facilities.<sup>15</sup> To perform the dispersion modeling and to develop the preliminary risk estimates, HEM-3 draws on three data libraries. The first is a library of meteorological data, which is used for dispersion calculations. This library includes 1 year (2016) of hourly surface and upper air observations from 824 meteorological stations, selected to provide coverage of the United States and Puerto Rico. A second library of United States Census Bureau census block<sup>16</sup> internal point locations and populations provides the basis of human exposure calculations (U.S. Census, 2010). In addition, for each census block, the census library includes the elevation and controlling

<sup>14</sup> For more information about HEM-3, go to <https://www.epa.gov/fera/risk-assessment-and-modeling-human-exposure-model-hem>.

<sup>15</sup> U.S. EPA. Revision to the *Guideline on Air Quality Models: Adoption of a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions* (70 FR 68218, November 9, 2005).

<sup>16</sup> A census block is the smallest geographic area for which census statistics are tabulated.

<sup>13</sup> SPECIATE is the EPA's repository of volatile organic gas and particulate matter (PM) speciation profiles of air pollution sources.

hill height, which are also used in dispersion calculations. A third library of pollutant-specific dose-response values is used to estimate health risk. These are discussed below.

#### b. Risk From Chronic Exposure to HAP

In developing the risk assessment for chronic exposures, we use the estimated annual average ambient air concentrations of each HAP emitted by each source in the source category. The HAP air concentrations at each nearby census block centroid located within 50 km of the facility are a surrogate for the chronic inhalation exposure concentration for all the people who reside in that census block. A distance of 50 km is consistent with both the analysis supporting the 1989 Benzene NESHAP (54 FR 38044, September 14, 1989) and the limitations of Gaussian dispersion models, including AERMOD.

For each facility, we calculate the MIR as the cancer risk associated with a continuous lifetime (24 hours per day, 7 days per week, 52 weeks per year, 70 years) exposure to the maximum concentration at the centroid of each inhabited census block. We calculate individual cancer risk by multiplying the estimated lifetime exposure to the ambient concentration of each HAP (in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ )) by its unit risk estimate (URE). The URE is an upper-bound estimate of an individual's incremental risk of contracting cancer over a lifetime of exposure to a concentration of 1 microgram of the pollutant per cubic meter of air. For residual risk assessments, we generally use UREs from the EPA's Integrated Risk Information System (IRIS). For carcinogenic pollutants without IRIS values, we look to other reputable sources of cancer dose-response values, often using California EPA (CalEPA) UREs, where available. In cases where new, scientifically credible dose-response values have been developed in a manner consistent with EPA guidelines and have undergone a peer review process similar to that used by the EPA, we may use such dose-response values in place of, or in addition to, other values, if appropriate. The pollutant-specific dose-response values used to estimate health risk are available at <https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants>.

To estimate individual lifetime cancer risks associated with exposure to HAP emissions from each facility in the source category, we sum the risks for

each of the carcinogenic HAP<sup>17</sup> emitted by the modeled facility. We estimate cancer risk at every census block within 50 km of every facility in the source category. The MIR is the highest individual lifetime cancer risk estimated for any of those census blocks. In addition to calculating the MIR, we estimate the distribution of individual cancer risks for the source category by summing the number of individuals within 50 km of the sources whose estimated risk falls within a specified risk range. We also estimate annual cancer incidence by multiplying the estimated lifetime cancer risk at each census block by the number of people residing in that block, summing results for all of the census blocks, and then dividing this result by a 70-year lifetime.

To assess the risk of noncancer health effects from chronic exposure to HAP, we calculate either an HQ or a target organ-specific hazard index (TOSHI). We calculate an HQ when a single noncancer HAP is emitted. Where more than one noncancer HAP is emitted, we sum the HQ for each of the HAP that affects a common target organ or target organ system to obtain a TOSHI. The HQ is the estimated exposure divided by the chronic noncancer dose-response value, which is a value selected from one of several sources. The preferred chronic noncancer dose-response value is the EPA RfC, defined as "an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime" ([https://iaspub.epa.gov/sor\\_internet/registry/termreg/searchandretrieve/](https://iaspub.epa.gov/sor_internet/registry/termreg/searchandretrieve/)

<sup>17</sup> The EPA's 2005 *Guidelines for Carcinogen Risk Assessment* classifies carcinogens as: "carcinogenic to humans," "likely to be carcinogenic to humans," and "suggestive evidence of carcinogenic potential." These classifications also coincide with the terms "known carcinogen, probable carcinogen, and possible carcinogen," respectively, which are the terms advocated in the EPA's *Guidelines for Carcinogen Risk Assessment*, published in 1986 (51 FR 33992, September 24, 1986). In August 2000, the document, *Supplemental Guidance for Conducting Health Risk Assessment of Chemical Mixtures* (EPA/630/R-00/002), was published as a supplement to the 1986 document. Copies of both documents can be obtained from <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=205338&CFID=70315376&CFTOKEN=71597944>. Summing the risk of these individual compounds to obtain the cumulative cancer risk is an approach that was recommended by the EPA's SAB in their 2002 peer review of the EPA's National Air Toxics Assessment (NATA) titled *NATA—Evaluating the National-scale Air Toxics Assessment 1996 Data—an SAB Advisory*, available at [https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/\\$File/ecadv02001.pdf](https://yosemite.epa.gov/sab/sabproduct.nsf/214C6E915BB04E14852570CA007A682C/$File/ecadv02001.pdf).

[glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary](https://www.epa.gov/glossariesandkeywordlists/search.do?details=&vocabName=IRIS%20Glossary)). In cases where an RfC from the EPA's IRIS is not available or where the EPA determines that using a value other than the RfC is appropriate, the chronic noncancer dose-response value can be a value from the following prioritized sources, which define their dose-response values similarly to the EPA: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (<https://www.atsdr.cdc.gov/mrls/index.asp>); (2) the CalEPA Chronic Reference Exposure Level (REL) (<https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>); or (3), as noted above, a scientifically credible dose-response value that has been developed in a manner consistent with the EPA guidelines and has undergone a peer review process similar to that used by the EPA. The pollutant-specific dose-response values used to estimate health risks are available at <https://www.epa.gov/fera/dose-response-assessment-assessing-health-risks-associated-exposure-hazardous-air-pollutants>.

#### c. Risk From Acute Exposure to HAP That May Cause Health Effects Other Than Cancer

For each HAP for which appropriate acute inhalation dose-response values are available, the EPA also assesses the potential health risks due to acute exposure. For these assessments, the EPA makes conservative assumptions about emission rates, meteorology, and exposure location. We use the peak hourly emission rate,<sup>18</sup> worst-case dispersion conditions, and, in accordance with our mandate under section 112 of the CAA, the point of highest off-site exposure to assess the potential risk to the maximally exposed individual.

To characterize the potential health risks associated with estimated acute inhalation exposures to a HAP, we generally use multiple acute dose-response values, including acute RELs, acute exposure guideline levels (AEGs), and emergency response

<sup>18</sup> In the absence of hourly emission data, we develop estimates of maximum hourly emission rates by multiplying the average actual annual emissions rates by a factor (either a category-specific factor or a default factor of 10) to account for variability. This is documented in *Residual Risk Assessment for Engine Test Cells/Stands Source Category in Support of the 2019 Risk and Technology Review Proposed Rule* and in Appendix 5 of the report: *Analysis of Data on Short-term Emission Rates Relative to Long-term Emission Rates*. Both are available in the docket for this rulemaking.

planning guidelines (ERPG) for 1-hour exposure durations), if available, to calculate acute HQs. The acute HQ is calculated by dividing the estimated acute exposure by the acute dose-response value. For each HAP for which acute dose-response values are available, the EPA calculates acute HQs.

An acute REL is defined as “the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration.”<sup>19</sup> Acute RELs are based on the most sensitive, relevant, adverse health effect reported in the peer-reviewed medical and toxicological literature. They are designed to protect the most sensitive individuals in the population through the inclusion of margins of safety. Because margins of safety are incorporated to address data gaps and uncertainties, exceeding the REL does not automatically indicate an adverse health impact. AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposures ranging from 10 minutes to 8 hours.<sup>20</sup> They are guideline levels for “once-in-a-lifetime, short-term exposures to airborne concentrations of acutely toxic, high-priority chemicals.” *Id.* at 21. The AEGL-1 is specifically defined as “the airborne concentration (expressed as ppm (parts per million) or mg/m<sup>3</sup> (milligrams per cubic meter)) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.” The document also notes that “Airborne concentrations below AEGL-1 represent exposure levels that can produce mild and progressively increasing but transient and nondisabling odor, taste, and sensory irritation or certain asymptomatic, nonsensory effects.” *Id.* AEGL-2 are defined as “the airborne

concentration (expressed as parts per million or milligrams per cubic meter) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects or an impaired ability to escape.” *Id.*

ERPGs are “developed for emergency planning and are intended as health-based guideline concentrations for single exposures to chemicals.”<sup>21</sup> *Id.* at 1. The ERPG-1 is defined as “the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to 1 hour without experiencing other than mild transient adverse health effects or without perceiving a clearly defined, objectionable odor.” *Id.* at 2. Similarly, the ERPG-2 is defined as “the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual’s ability to take protective action.” *Id.* at 1.

An acute REL for 1-hour exposure durations is typically lower than its corresponding AEGL-1 and ERPG-1. Even though their definitions are slightly different, AEGL-1s are often the same as the corresponding ERPG-1s, and AEGL-2s are often equal to ERPG-2s. The maximum HQs from our acute inhalation screening risk assessment typically result when we use the acute REL for a HAP. In cases where the maximum acute HQ exceeds 1, we also report the HQ based on the next highest acute dose-response value (usually the AEGL-1 and/or the ERPG-1).

For the Engine Test Cells/Standards source category, annual actual emission values were multiplied by a conservative factor of 9.5 instead of the default emissions multiplier of 10. This source category specific factor was developed using activity data collected from the 2016 questionnaire. A further discussion of why this factor was chosen can be found in the memorandum, *Emissions Data and Acute Risk Factor Used in Residual Risk Modeling: Engine Test Cell/Standards*, available in the docket for this rulemaking.

In our acute inhalation screening risk assessment, acute impacts are deemed negligible for HAP for which acute HQs are less than or equal to 1 (even under the conservative assumptions of the screening assessment), and no further analysis is performed for these HAP. In cases where an acute HQ from the screening step is greater than 1, we consider additional site-specific data to develop a more refined estimate of the potential for acute exposures of concern. For this source category, the data refinements employed consisted of looking at the impact of acute risks at only off source category property locations. These refinements are discussed more fully in the *Residual Risk Assessment for the Engine Test Cells/Standards Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, which is available in the docket for this source category.

4. How do we conduct the multipathway exposure and risk screening assessment?

The EPA conducts a tiered screening assessment examining the potential for significant human health risks due to exposures via routes other than inhalation (*i.e.*, ingestion). We first determine whether any sources in the source category emit any HAP known to be PB-HAP, as identified in the EPA’s Air Toxics Risk Assessment Library (see Volume 1, Appendix D, at <https://www.epa.gov/fera/risk-assessment-and-modeling-air-toxics-risk-assessment-reference-library>).

For the Engine Test Cells/Standards source category, we identified PB-HAP emissions of lead compounds, cadmium compounds, arsenic compounds, mercury compounds, and polycyclic organic matter (POM) (of which polycyclic aromatic hydrocarbons is a subset), so we proceeded to the next step of the evaluation. In this step, we determine whether the facility-specific emission rates of the emitted PB-HAP are large enough to create the potential for significant human health risk through ingestion exposure under reasonable worst-case conditions. To facilitate this step, we use previously developed screening threshold emission rates for several PB-HAP that are based on a hypothetical upper-end screening exposure scenario developed for use in conjunction with the EPA’s Total Risk Integrated Methodology. Fate, Transport, and Ecological Exposure (TRIM.FaTE) model. The PB-HAP with screening threshold emission rates are arsenic compounds, cadmium compounds, chlorinated dibenzodioxins and furans, mercury compounds, and

<sup>19</sup> CalEPA issues acute RELs as part of its Air Toxics Hot Spots Program, and the 1-hour and 8-hour values are documented in *Air Toxics Hot Spots Program Risk Assessment Guidelines, Part I, The Determination of Acute Reference Exposure Levels for Airborne Toxicants*, which is available at <https://oehha.ca.gov/air/general-info/oehha-acute-8-hour-and-chronic-reference-exposure-level-rel-summary>.

<sup>20</sup> National Academy of Sciences, 2001. *Standing Operating Procedures for Developing Acute Exposure Levels for Hazardous Chemicals*, page 2. Available at [https://www.epa.gov/sites/production/files/2015-09/documents/sop\\_final\\_standing\\_operating\\_procedures\\_2001.pdf](https://www.epa.gov/sites/production/files/2015-09/documents/sop_final_standing_operating_procedures_2001.pdf). Note that the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances ended in October 2011, but the AEGL program continues to operate at the EPA and works with the National Academies to publish final AEGLs (<https://www.epa.gov/aegl>).

<sup>21</sup> ERPGS Procedures and Responsibilities. March 2014. American Industrial Hygiene Association. Available at: <https://www.aiha.org/get-involved/AIHAGuidelineFoundation/EmergencyResponsePlanningGuidelines/Documents/ERPG%20Committee%20Standard%20Operating%20Procedures%20-%20March%202014%20Revision%20%28Updated%2010-2-2014%29.pdf>.

POM. Based on the EPA estimates of toxicity and bioaccumulation potential, the pollutants above represent a conservative list for inclusion in multipathway risk assessments for RTR rules. (See Volume 1, Appendix D at [https://www.epa.gov/sites/production/files/201308/documents/volume\\_1\\_reflibrary.pdf](https://www.epa.gov/sites/production/files/201308/documents/volume_1_reflibrary.pdf)). In this assessment, we compare the facility-specific emission rates of these PB-HAP to the screening threshold emission rates for each PB-HAP to assess the potential for significant human health risks via the ingestion pathway. We call this application of the TRIM.FaTE model the Tier 1 screening assessment. The ratio of a facility's actual emission rate to the Tier 1 screening threshold emission rate is a "screening value."

We derive the Tier 1 screening threshold emission rates for these PB-HAP (other than lead compounds) to correspond to a maximum excess lifetime cancer risk of 1-in-1 million (*i.e.*, for arsenic compounds, polychlorinated dibenzodioxins and furans and POM) or, for HAP that cause noncancer health effects (*i.e.*, cadmium compounds and mercury compounds), a maximum HQ of 1. If the emission rate of any one PB-HAP or combination of carcinogenic PB-HAP in the Tier 1 screening assessment exceeds the Tier 1 screening threshold emission rate for any facility (*i.e.*, the screening value is greater than 1), we conduct a second screening assessment, which we call the Tier 2 screening assessment.

In the Tier 2 screening assessment, the location of each facility that exceeds a Tier 1 screening threshold emission rate is used to refine the assumptions associated with the Tier 1 fisher and farmer exposure scenarios at that facility. A key assumption in the Tier 1 screening assessment is that a lake and/or farm is located near the facility. As part of the Tier 2 screening assessment, we use a U.S. Geological Survey (USGS) database to identify actual waterbodies within 50 km of each facility. We also examine the differences between local meteorology near the facility and the meteorology used in the Tier 1 screening assessment. We then adjust the previously-developed Tier 1 screening threshold emission rates for each PB-HAP for each facility based on an understanding of how exposure concentrations estimated for the screening scenario change with the use of local meteorology and USGS waterbody data. If the PB-HAP emission rates for a facility exceed the Tier 2 screening threshold emission rates and data are available, we may conduct a Tier 3 screening assessment. If PB-HAP emission rates do not exceed a Tier 2

screening value of 1, we consider those PB-HAP emissions to pose risks below a level of concern.

There are several analyses that can be included in a Tier 3 screening assessment, depending upon the extent of refinement warranted, including validating that the lakes are fishable, considering plume-rise to estimate emissions lost above the mixing layer, and considering hourly effects of meteorology and plume rise on chemical fate and transport. If the Tier 3 screening assessment indicates that risks above levels of concern cannot be ruled out, the EPA may further refine the screening assessment through a site-specific assessment.

In evaluating the potential multipathway risk from emissions of lead compounds, rather than developing a screening threshold emission rate, we compare maximum estimated chronic inhalation exposure concentrations to the level of the current National Ambient Air Quality Standard (NAAQS) for lead.<sup>22</sup> Values below the level of the primary (health-based) lead NAAQS are considered to have a low potential for multipathway risk.

For further information on the multipathway assessment approach, see the *Residual Risk Assessment for the Engine Test Cells/Standards Source Category in Support of the Risk and Technology Review 2019 Proposed Rule*, which is available in the docket for this action.

5. How do we conduct the environmental risk screening assessment?

#### a. Adverse Environmental Effect, Environmental HAP, and Ecological Benchmarks

The EPA conducts a screening assessment to examine the potential for an adverse environmental effect as required under section 112(f)(2)(A) of the CAA. Section 112(a)(7) of the CAA defines "adverse environmental effect" as "any significant and widespread adverse effect, which may reasonably be

anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

The EPA focuses on eight HAP, which are referred to as "environmental HAP," in its screening assessment: Six PB-HAP and two acid gases. The PB-HAP included in the screening assessment are arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. The acid gases included in the screening assessment are hydrochloric acid (HCl) and hydrogen fluoride (HF).

HAP that persist and bioaccumulate are of particular environmental concern because they accumulate in the soil, sediment, and water. The acid gases, HCl and HF, are included due to their well-documented potential to cause direct damage to terrestrial plants. In the environmental risk screening assessment, we evaluate the following four exposure media: Terrestrial soils, surface water bodies (includes water-column and benthic sediments), fish consumed by wildlife, and air. Within these four-exposure media, we evaluate nine ecological assessment endpoints, which are defined by the ecological entity and its attributes. For PB-HAP (other than lead), both community-level and population-level endpoints are included. For acid gases, the ecological assessment evaluated is terrestrial plant communities.

An ecological benchmark represents a concentration of HAP that has been linked to a particular environmental effect level. For each environmental HAP, we identified the available ecological benchmarks for each assessment endpoint. We identified, where possible, ecological benchmarks at the following effect levels: Probable effect levels, lowest-observed-adverse-effect level, and no-observed-adverse-effect level. In cases where multiple effect levels were available for a particular PB-HAP and assessment endpoint, we use all of the available effect levels to help us to determine whether ecological risks exist and, if so, whether the risks could be considered significant and widespread.

For further information on how the environmental risk screening assessment was conducted, including a discussion of the risk metrics used, how the environmental HAP were identified, and how the ecological benchmarks were selected, see Appendix 9 of the *Residual Risk Assessment for the Engine Test Cells/Standards Source Category in*

<sup>22</sup>In doing so, the EPA notes that the legal standard for a primary NAAQS—that a standard is requisite to protect public health and provide an adequate margin of safety (CAA section 109(b))—differs from the CAA section 112(f) standard (requiring, among other things, that the standard provide an "ample margin of safety to protect public health"). However, the primary lead NAAQS is a reasonable measure of determining risk acceptability (*i.e.*, the first step of the Benzene NESHAP analysis) since it is designed to protect the most susceptible group in the human population—children, including children living near major lead emitting sources. 73 FR 67002/3; 73 FR 67000/3; 73 FR 67005/1. In addition, applying the level of the primary lead NAAQS at the risk acceptability step is conservative, since that primary lead NAAQS reflects an adequate margin of safety.

*Support of the Risk and Technology Review 2019 Proposed Rule*, which is available in the docket for this action.

#### b. Environmental Risk Screening Methodology

For the environmental risk screening assessment, the EPA first determined whether any facilities in the Engine Test Cells/Standards source category emitted any of the environmental HAP (cadmium, dioxins, POM, mercury [both inorganic mercury and methylmercury], arsenic, and lead). For the Engine Test Cells/Standards source category, we identified emissions of arsenic, cadmium, HCl, HF, lead, mercury, and POMs. Because one or more of the environmental HAP evaluated are emitted by at least one facility in the source category, we proceeded to the second step of the evaluation.

#### c. PB-HAP Methodology

The environmental screening assessment includes six PB-HAP, arsenic compounds, cadmium compounds, dioxins/furans, POM, mercury (both inorganic mercury and methyl mercury), and lead compounds. With the exception of lead, the environmental risk screening assessment for PB-HAP consists of three tiers. The first tier of the environmental risk screening assessment uses the same health-protective conceptual model that is used for the Tier 1 human health screening assessment. TRIM.FaTE model simulations were used to back-calculate Tier 1 screening threshold emission rates. The screening threshold emission rates represent the emission rate in tons of pollutant per year that results in media concentrations at the facility that equal the relevant ecological benchmark. To assess emissions from each facility in the category, the reported emission rate for each PB-HAP was compared to the Tier 1 screening threshold emission rate for that PB-HAP for each assessment endpoint and effect level. If emissions from a facility do not exceed the Tier 1 screening threshold emission rate, the facility “passes” the screening assessment, and, therefore, is not evaluated further under the screening approach. If emissions from a facility exceed the Tier 1 screening threshold emission rate, we evaluate the facility further in Tier 2.

In Tier 2 of the environmental screening assessment, the screening threshold emission rates are adjusted to account for local meteorology and the actual location of lakes in the vicinity of facilities that did not pass the Tier 1 screening assessment. For soils, we evaluate the average soil concentration for all soil parcels within a 7.5-km

radius for each facility and PB-HAP. For the water, sediment, and fish tissue concentrations, the highest value for each facility for each pollutant is used. If emission concentrations from a facility do not exceed the Tier 2 screening threshold emission rate, the facility “passes” the screening assessment and typically is not evaluated further. If emissions from a facility exceed the Tier 2 screening threshold emission rate, we evaluate the facility further in Tier 3.

As in the multipathway human health risk assessment, in Tier 3 of the environmental screening assessment, we examine the suitability of the lakes around the facilities to support life and remove those that are not suitable (*e.g.*, lakes that have been filled in or are industrial ponds), adjust emissions for plume-rise, and conduct hour-by-hour time-series assessments. If these Tier 3 adjustments to the screening threshold emission rates still indicate the potential for an adverse environmental effect (*i.e.*, facility emission rate exceeds the screening threshold emission rate), we may elect to conduct a more refined assessment using more site-specific information. If, after additional refinement, the facility emission rate still exceeds the screening threshold emission rate, the facility may have the potential to cause an adverse environmental effect.

To evaluate the potential for an adverse environmental effect from lead, we compared the average modeled air concentrations (from HEM-3) of lead around each facility in the source category to the level of the secondary NAAQS for lead. The secondary lead NAAQS is a reasonable means of evaluating environmental risk because it is set to provide substantial protection against adverse welfare effects which can include “effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.”

#### d. Acid Gas Environmental Risk Methodology

The environmental screening assessment for acid gases evaluates the potential phytotoxicity and reduced productivity of plants due to chronic exposure to HF and HCl. The environmental risk screening methodology for acid gases is a single-tier screening assessment that compares modeled ambient air concentrations (from AERMOD) to the ecological benchmarks for each acid gas. To

identify a potential adverse environmental effect (as defined in section 112(a)(7) of the CAA) from emissions of HF and HCl, we evaluate the following metrics: The size of the modeled area around each facility that exceeds the ecological benchmark for each acid gas, in acres and km<sup>2</sup>; the percentage of the modeled area around each facility that exceeds the ecological benchmark for each acid gas; and the area-weighted average screening value around each facility (calculated by dividing the area-weighted average concentration over the 50-km modeling domain by the ecological benchmark for each acid gas). For further information on the environmental screening assessment approach, see Appendix 9 of the *Residual Risk Assessment for the Engine Test Cells/Standards Source Category in Support of the Risk and Technology Review 2019 Proposed Rule*, which is available in the docket for this action.

#### 6. How do we conduct facility-wide assessments?

To put the source category risks in context, we typically examine the risks from the entire “facility,” where the facility includes all HAP-emitting operations within a contiguous area and under common control. In other words, we examine the HAP emissions not only from the source category emission points of interest, but also emissions of HAP from all other emission sources at the facility for which we have data. For this source category, we conducted the facility-wide assessment using a dataset compiled from the 2014 NEI. The source category records of that NEI dataset were removed, evaluated, and updated as described in section II.C of this preamble (What data collection activities were conducted to support this action?). Once a quality assured source category dataset was available, it was placed back with the remaining records from the NEI for that facility. The facility-wide file was then used to analyze risks due to the inhalation of HAP that are emitted “facility-wide” for the populations residing within 50 km of each facility, consistent with the methods used for the source category analysis described above. For these facility-wide risk analyses, the modeled source category risks were compared to the facility-wide risks to determine the portion of the facility-wide risks that could be attributed to the source category addressed in this proposal. We also specifically examined the facility that was associated with the highest estimate of risk and determined the percentage of that risk attributable to the source category of interest. The *Residual*

*Risk Assessment for the Engine Test Cells/Stands Source Category in Support of the Risk and Technology Review 2019 Proposed Rule*, available through the docket for this action, provides the methodology and results of the facility-wide analyses, including all facility-wide risks and the percentage of source category contribution to facility-wide risks.

7. How do we consider uncertainties in risk assessment?

Uncertainty and the potential for bias are inherent in all risk assessments, including those performed for this proposal. Although uncertainty exists, we believe that our approach, which used conservative tools and assumptions, ensures that our decisions are health and environmentally protective. A brief discussion of the uncertainties in the RTR emissions dataset, dispersion modeling, inhalation exposure estimates, and dose-response relationships follows below. Also included are those uncertainties specific to our acute screening assessments, multipathway screening assessments, and our environmental risk screening assessments. A more thorough discussion of these uncertainties is included in the *Residual Risk Assessment for the Engine Test Cells/ Stands Source Category in Support of the Risk and Technology Review 2019 Proposed Rule*, which is available in the docket for this action. If a multipathway site-specific assessment was performed for this source category, a full discussion of the uncertainties associated with that assessment can be found in Appendix 11 of that document, *Site-Specific Human Health Multipathway Residual Risk Assessment Report*.

a. Uncertainties in the RTR Emissions Dataset

Although the development of the RTR emissions dataset involved quality assurance/quality control processes, the accuracy of emissions values will vary depending on the source of the data, the degree to which data are incomplete or missing, the degree to which assumptions made to complete the datasets are accurate, errors in emission estimates, and other factors. The emission estimates considered in this analysis generally are annual totals for certain years, and they do not reflect short-term fluctuations during the course of a year or variations from year to year. The estimates of peak hourly emission rates for the acute effects screening assessment were based on an emission adjustment factor applied to the average annual hourly emission

rates, which are intended to account for emission fluctuations due to normal facility operations.

b. Uncertainties in Dispersion Modeling

We recognize there is uncertainty in ambient concentration estimates associated with any model, including the EPA's recommended regulatory dispersion model, AERMOD. In using a model to estimate ambient pollutant concentrations, the user chooses certain options to apply. For RTR assessments, we select some model options that have the potential to overestimate ambient air concentrations (e.g., not including plume depletion or pollutant transformation). We select other model options that have the potential to underestimate ambient impacts (e.g., not including building downwash). Other options that we select have the potential to either under- or overestimate ambient levels (e.g., meteorology and receptor locations). On balance, considering the directional nature of the uncertainties commonly present in ambient concentrations estimated by dispersion models, the approach we apply in the RTR assessments should yield unbiased estimates of ambient HAP concentrations. We also note that the selection of meteorology dataset location could have an impact on the risk estimates. As we continue to update and expand our library of meteorological station data used in our risk assessments, we expect to reduce this variability.

c. Uncertainties in Inhalation Exposure Assessment

Although every effort is made to identify all of the relevant facilities and emission points, as well as to develop accurate estimates of the annual emission rates for all relevant HAP, the uncertainties in our emission inventory likely dominate the uncertainties in the exposure assessment. Some uncertainties in our exposure assessment include human mobility, using the centroid of each census block, assuming lifetime exposure, and assuming only outdoor exposures. For most of these factors, there is neither an under nor overestimate when looking at the maximum individual risk or the incidence, but the shape of the distribution of risks may be affected. With respect to outdoor exposures, actual exposures may not be as high if people spend time indoors, especially for very reactive pollutants or larger particles. For all factors, we reduce uncertainty when possible. For example, with respect to census-block centroids, we analyze large blocks using aerial imagery and adjust locations of

the block centroids to better represent the population in the blocks. We also add additional receptor locations where the population of a block is not well represented by a single location.

d. Uncertainties in Dose-Response Relationships

There are uncertainties inherent in the development of the dose-response values used in our risk assessments for cancer effects from chronic exposures and noncancer effects from both chronic and acute exposures. Some uncertainties are generally expressed quantitatively, and others are generally expressed in qualitative terms. We note, as a preface to this discussion, a point on dose-response uncertainty that is stated in the EPA's *2005 Guidelines for Carcinogen Risk Assessment*; namely, that "the primary goal of EPA actions is protection of human health; accordingly, as an Agency policy, risk assessment procedures, including default options that are used in the absence of scientific data to the contrary, should be health protective" (the EPA's *2005 Guidelines for Carcinogen Risk Assessment*, page 1–7). This is the approach followed here as summarized in the next paragraphs.

Cancer UREs used in our risk assessments are those that have been developed to generally provide an upper bound estimate of risk.<sup>23</sup> That is, they represent a "plausible upper limit to the true value of a quantity" (although this is usually not a true statistical confidence limit). In some circumstances, the true risk could be as low as zero; however, in other circumstances the risk could be greater.<sup>24</sup> Chronic noncancer RfC and reference dose (RfD) values represent chronic exposure levels that are intended to be health-protective levels. To derive dose-response values that are intended to be "without appreciable risk," the methodology relies upon an uncertainty factor (UF) approach,<sup>25</sup> which considers uncertainty, variability, and gaps in the available data. The UFs are applied to derive dose-response values that are intended to protect

<sup>23</sup> IRIS glossary ([https://ofmpub.epa.gov/sor\\_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary](https://ofmpub.epa.gov/sor_internet/registry/termreg/searchandretrieve/glossariesandkeywordlists/search.do?details=&glossaryName=IRIS%20Glossary)).

<sup>24</sup> An exception to this is the URE for benzene, which is considered to cover a range of values, each end of which is considered to be equally plausible, and which is based on maximum likelihood estimates.

<sup>25</sup> See *A Review of the Reference Dose and Reference Concentration Processes*, U.S. EPA, December 2002, and *Methods for Derivation of Inhalation Reference Concentrations and Application of Inhalation Dosimetry*, U.S. EPA, 1994.

against appreciable risk of deleterious effects.

Many of the UFs used to account for variability and uncertainty in the development of acute dose-response values are quite similar to those developed for chronic durations. Additional adjustments are often applied to account for uncertainty in extrapolation from observations at one exposure duration (e.g., 4 hours) to derive an acute dose-response value at another exposure duration (e.g., 1 hour). Not all acute dose-response values are developed for the same purpose, and care must be taken when interpreting the results of an acute assessment of human health effects relative to the dose-response value or values being exceeded. Where relevant to the estimated exposures, the lack of acute dose-response values at different levels of severity should be factored into the risk characterization as potential uncertainties.

Uncertainty also exists in the selection of ecological benchmarks for the environmental risk screening assessment. We established a hierarchy of preferred benchmark sources to allow selection of benchmarks for each environmental HAP at each ecological assessment endpoint. We searched for benchmarks for three effect levels (i.e., no-effects level, threshold-effect level, and probable effect level), but not all combinations of ecological assessment/environmental HAP had benchmarks for all three effect levels. Where multiple effect levels were available for a particular HAP and assessment endpoint, we used all of the available effect levels to help us determine whether risk exists and whether the risk could be considered significant and widespread.

Although we make every effort to identify appropriate human health effect dose-response values for all pollutants emitted by the sources in this risk assessment, some HAP emitted by this source category are lacking dose-response assessments. Accordingly, these pollutants cannot be included in the quantitative risk assessment, which could result in quantitative estimates understating HAP risk. To help to alleviate this potential underestimate, where we conclude similarity with a HAP for which a dose-response value is available, we use that value as a surrogate for the assessment of the HAP for which no value is available. To the extent use of surrogates indicates appreciable risk, we may identify a need to increase priority for an IRIS assessment for that substance. We additionally note that, generally speaking, HAP of greatest concern due

to environmental exposures and hazard are those for which dose-response assessments have been performed, reducing the likelihood of understating risk. Further, HAP not included in the quantitative assessment are assessed qualitatively and considered in the risk characterization that informs the risk management decisions, including consideration of HAP reductions achieved by various control options.

For a group of compounds that are unspiciated (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 also apply the most protective dose-response value from the other compounds in the group to estimate risk.

#### e. Uncertainties in Acute Inhalation Screening Assessments

In addition to the uncertainties highlighted above, there are several factors specific to the acute exposure assessment that the EPA conducts as part of the risk review under section 112 of the CAA. The 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. In the acute screening assessment that we conduct under the RTR program, we assume that peak emissions from 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 this same time period. For this source category, these assumptions would tend to be 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.

#### f. Uncertainties in the Multipathway and Environmental Risk Screening Assessments

For each source category, we generally rely on site-specific levels of PB-HAP or environmental HAP emissions to determine whether a refined assessment of the impacts from multipathway exposures is necessary or

whether it is necessary to perform an environmental screening assessment. This determination is based on the results of a three-tiered screening assessment that relies on the outputs from models—TRIM.FaTE and AERMOD—that estimate environmental pollutant concentrations and human exposures for five PB-HAP (dioxin, POM, mercury, cadmium, and arsenic) and two acid gases (HF and HCl). For lead, we use AERMOD to determine ambient air concentrations, which are then compared to the secondary NAAQS standard for lead. Two important types of uncertainty associated with the use of these models in RTR risk assessments and inherent to any assessment that relies on environmental modeling are model uncertainty and input uncertainty.<sup>26</sup>

Model uncertainty concerns whether the model adequately represents the actual processes (e.g., movement and accumulation) that might occur in the environment. For example, does the model adequately describe the movement of a pollutant through the soil? This type of uncertainty is difficult to quantify. However, based on feedback received from previous EPA SAB reviews and other reviews, we are confident that the models used in the screening assessments are appropriate and state-of-the-art for the multipathway and environmental screening risk assessments conducted in support of RTR.

Input uncertainty is concerned with how accurately the models have been configured and parameterized for the assessment at hand. For Tier 1 of the multipathway and environmental screening assessments, we configured the models to avoid underestimating exposure and risk. This was accomplished by selecting upper-end values from nationally representative datasets for the more influential parameters in the environmental model, including selection and spatial configuration of the area of interest, lake location and size, meteorology, surface water, soil characteristics, and structure of the aquatic food web. We also assume an ingestion exposure scenario and values for human exposure factors that represent reasonable maximum exposures.

In Tier 2 of the multipathway and environmental screening assessments, we refine the model inputs to account

<sup>26</sup> In the context of this discussion, the term “uncertainty” as it pertains to exposure and risk encompasses both *variability* in the range of expected inputs and screening results due to existing spatial, temporal, and other factors, as well as *uncertainty* in being able to accurately estimate the true result.

for meteorological patterns in the vicinity of the facility versus using upper-end national values, and we identify the actual location of lakes near the facility rather than the default lake location that we apply in Tier 1. By refining the screening approach in Tier 2 to account for local geographical and meteorological data, we decrease the likelihood that concentrations in environmental media are overestimated, thereby increasing the usefulness of the screening assessment. In Tier 3 of the screening assessments, we refine the model inputs again to account for hour-by-hour plume rise and the height of the mixing layer. We can also use those hour-by-hour meteorological data in a TRIM.FaTE run using the screening configuration corresponding to the lake location. These refinements produce a more accurate estimate of chemical concentrations in the media of interest, thereby reducing the uncertainty with those estimates. The assumptions and the associated uncertainties regarding the selected ingestion exposure scenario are the same for all three tiers.

For the environmental screening assessment for acid gases, we employ a single-tiered approach. We use the modeled air concentrations and compare those with ecological benchmarks.

For all tiers of the multipathway and environmental screening assessments,

our approach to addressing model input uncertainty is generally cautious. We choose model inputs from the upper end of the range of possible values for the influential parameters used in the models, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure. This approach reduces the likelihood of not identifying high risks for adverse impacts.

Despite the uncertainties, when individual pollutants or facilities do not exceed screening threshold emission rates (*i.e.*, screen out), we are confident that the potential for adverse multipathway impacts on human health is very low. On the other hand, when individual pollutants or facilities do exceed screening threshold emission rates, it does not mean that impacts are significant, only that we cannot rule out that possibility and that a refined assessment for the site might be necessary to obtain a more accurate risk characterization for the source category.

The EPA evaluates the following HAP in the multipathway and/or environmental risk screening assessments, where applicable: Arsenic, cadmium, dioxins/furans, lead, mercury (both inorganic and methyl mercury), POM, HCl, and HF. These HAP represent pollutants that can cause adverse impacts either through direct exposure to HAP in the air or through

exposure to HAP that are deposited from the air onto soils and surface waters and then through the environment into the food web. These HAP represent those HAP for which we can conduct a meaningful multipathway or environmental screening risk assessment. For other HAP not included in our screening assessments, the model has not been parameterized such that it can be used for that purpose. In some cases, depending on the HAP, we may not have appropriate multipathway models that allow us to predict the concentration of that pollutant. The EPA acknowledges that other HAP beyond these that we are evaluating may have the potential to cause adverse effects and, therefore, the EPA may evaluate other relevant HAP in the future, as modeling science and resources allow.

**IV. Analytical Results and Proposed Decisions**

*A. What are the results of the risk assessment and analyses?*

**1. Inhalation Risk Assessment Results**

Table 2 of this preamble provides a summary of the results of the inhalation risk assessment for the source category. More detailed information on the risk assessment can be found in the risk document, available in the docket for this action.

**TABLE 2—ENGINE TEST CELLS/STANDS INHALATION RISK ASSESSMENT RESULTS**

Number of Facilities <sup>1</sup>	Maximum individual cancer risk (in 1 million) <sup>2</sup>		Population at increased risk of cancer ≥1-in-1 million		Annual cancer incidence (cases per year)		Maximum chronic noncancer TOSHI <sup>3</sup>		Maximum screening acute Noncancer HQ <sup>4</sup>
	Based on . . .		Based on . . .		Based on . . .		Based on . . .		Based on actual emissions level
	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	Actual emissions level	Allowable emissions level	
59 .....	20	70	2,700	190,000	0.005	0.02	0.1	0.5	HQ <sub>REL</sub> = 9 (acrolein). HQ <sub>AEGL-1</sub> = 0.4.

<sup>1</sup> Number of facilities evaluated in the risk analysis.

<sup>2</sup> Maximum individual excess lifetime cancer risk due to HAP emissions from the source category.

<sup>3</sup> Maximum TOSHI. The target organ system with the highest TOSHI for the source category is respiratory. The respiratory TOSHI was calculated using the CalEPA chronic REL for acrolein. The EPA is in the process of updating the IRIS RfC for acrolein. If the RfC is updated prior to signature of the final rule, we will use it in the assessment.

<sup>4</sup> 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, which in most cases is the REL. When an HQ exceeds 1, we also show the HQ using the next lowest available acute dose-response value.

As shown in Table 2, the chronic inhalation cancer risk assessment, based on actual emissions could be as high as 20-in-1 million, with benzene, 1,3-butadiene, formaldehyde, and acetaldehyde emissions from reciprocating engine testing as the major contributors to the risk. The total estimated cancer incidence from this source category is 0.005 excess cancer

cases per year, or one excess case in every 200 years. About 2,700 people are estimated to have cancer risks above 1-in-1 million from HAP emitted from this source category, with 60 of those people estimated to have cancer risks above 10-in-1 million. The maximum chronic noncancer HI value for the source category could be up to 0.1 (respiratory) driven by emissions of acrolein,

acetaldehyde, formaldehyde, and naphthalene from reciprocating engine testing, and no one is exposed to TOSHI levels above 1.

Results from the inhalation risk assessment using the MACT-allowable emissions indicate that the cancer MIR could be as high as 70-in-1 million with benzene, 1,3-butadiene, formaldehyde, and acetaldehyde emissions from

reciprocating engine testing driving the risks, and that the maximum chronic noncancer TOSHI (respiratory) value could be as high as 0.5 at the MACT-allowable emissions level with acrolein, acetaldehyde, formaldehyde, and naphthalene emissions from reciprocating engine testing driving the TOSHI. The total estimated cancer incidence from this source category considering allowable emissions is expected to be about 0.02 excess cancer cases per year or 1 excess case in every 50 years. Based on allowable emission rates, approximately 190,000 people are estimated to have cancer risks above 1-in-1 million, with 500 of those people estimated to have cancer risks above 10-in-1 million. No people are estimated to have a noncancer HI above 1.

## 2. Acute Risk Results

Table 2 of this preamble provides the worst-case acute HQ (based on the REL) of 9, driven by actual emissions of acrolein. To better characterize the potential health risks associated with estimated worst-case acute exposures to HAP, and in response to a key recommendation from the SAB's peer review of the EPA's RTR risk assessment methodologies, we examined 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. Therefore, when an REL is exceeded and an AEGL-1 or ERPG-1 level is available (*i.e.*, levels at which mild, reversible effects are anticipated in the general public for a single exposure), we typically use them as an additional comparative measure, as they provide an upper bound for exposure levels above which exposed individuals could experience effects. As the exposure concentration increases above the acute REL, the potential for effects increases.

The highest refined screening acute HQ value was 9 (based on the acute REL for acrolein). This value includes a refinement of determining the highest HQ value that is outside facility boundaries. In this case the highest value (9) occurs adjacent to the property boundary in a remote wooded location. HQ values at any nearby residential location are below 1. As noted previously, the highest HQ assumes that

the primary source of the acrolein emissions from turbine engine testing operations was modeled with an hourly emissions multiplier of 9.5 times the annual emissions rate. As presented in Table 2, no facilities are estimated to have an HQ based on an AEGL or an EPRG greater than 1.

## 3. Multipathway Risk Screening Results

Of the 59 facilities in the source category, 21 facilities reported emissions of carcinogenic PB-HAP (arsenic and POM), and 23 facilities reported emissions of non-carcinogenic PB-HAP (cadmium and mercury). Of the facilities included in the assessment, three facilities reported emissions of a carcinogenic PB-HAP (arsenic) that exceeded a Tier 1 cancer screening threshold emission rate, and one facility reported emissions of non-carcinogenic PB-HAP (cadmium and mercury) that exceeded a Tier 1 noncancer screening threshold emission rate. For facilities that exceeded the Tier 1 multipathway screening threshold emission rate for one or more PB-HAP, we used additional facility site-specific information to perform a Tier 2 assessment and determine the maximum chronic cancer and noncancer impacts for the source category. Based on the Tier 2 multipathway cancer assessment, the arsenic emissions exceeded the Tier 2 screening threshold emission rate by a factor of 2.

An exceedance of a screening threshold emission rate in any of the tiers cannot be equated with a risk value or an HQ (or HI). Rather, it represents a high-end estimate of what the risk or hazard may be. For example, a screening threshold emission rate of 2 for a non-carcinogen can be interpreted to mean that we are confident that the HQ would be lower than 2. Similarly, a tier screening threshold emission rate of 30 for a carcinogen means that we are confident that the risk is lower than 30-in-1 million. Our confidence comes from the conservative, or health-protective, assumptions encompassed in the screening tiers: We choose inputs from the upper end of the range of possible values for the influential parameters used in the screening tiers, and we assume that the exposed individual exhibits ingestion behavior that would lead to a high total exposure.

The Tier 2 noncancer screening threshold emission rate for both mercury and cadmium emissions were below 1. Thus, based on the Tier 2 results presented above, additional screening or site-specific assessments were not deemed necessary.

## 4. Environmental Risk Screening Results

As described in section III.A of this document, we conducted an environmental risk screening assessment for the Engine Test Cells/ Stands source category for the following pollutants: Arsenic, cadmium, HCl, HF, lead, mercury (methyl mercury and mercuric chloride), and POMs.

In the Tier 1 screening analysis for PB-HAP (other than lead, which was evaluated differently), arsenic and POM emissions had no exceedances of any of the ecological benchmarks evaluated. Divalent mercury, methyl mercury and cadmium emissions had Tier 1 exceedances at one facility of surface soil benchmarks by a maximum screening value of 3.

A Tier 2 screening analysis was performed for divalent mercury, methyl mercury, and cadmium emissions. In the Tier 2 screening analysis, there were no exceedances of any of the ecological benchmarks evaluated for any of the pollutants.

For lead, we did not estimate any exceedances of the secondary lead NAAQS. For HCl and HF, the average modeled concentration around each facility (*i.e.*, the average concentration of all off-site data points in the modeling domain) did not exceed any ecological benchmark. In addition, each individual modeled concentration of HCl and HF (*i.e.*, each off-site data point in the modeling domain) was below the ecological benchmarks for all facilities.

Based on the results of the environmental risk screening analysis, we do not expect an adverse environmental effect as a result of HAP emissions from this source category.

## 5. Facility-Wide Risk Results

The facility-wide chronic MIR and TOSHI are based on emissions from all sources at the identified facilities (both MACT and non-MACT sources). The results of the facility-wide assessment for cancer risks indicate that 23 facilities have a facility-wide cancer MIR greater than or equal to 1-in-1 million, and 10 of those facilities have a facility-wide cancer MIR greater than or equal to 10-in-1-million. The maximum facility-wide cancer MIR is 70-in-1 million, mainly driven by emissions of chromium (VI) compounds from organic solvent (miscellaneous VOC) evaporation. The total estimated cancer incidence from the whole facility is 0.03 excess cancer cases per year, or about one excess case in every 33 years. Approximately 190,000 people are estimated to have cancer risks above 1-in-1 million from exposure to HAP emitted from both MACT and non-

MACT sources at the 59 facilities in this source category, with 6,800 of those people estimated to have cancer risks above 10-in-1 million. The maximum facility-wide TOSHI (neurological) for the source category is estimated to be less than 1 (at 0.4), mainly driven by emissions of lead compounds and hydrogen cyanide from open burning of rocket propellant (an industrial solid waste disposal process) and by trichloroethylene emissions from liquid waste (a general waste treatment process). No people are exposed to

noncancer HI levels above 1, based on facility-wide emissions from the 59 facilities in this source category.

6. What demographic groups might benefit from this regulation?

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 risk to individual demographic groups of the populations living within 5 km and within 50 km of the facilities. In the

analysis, we evaluated the distribution of HAP-related cancer and noncancer risk from the Engine Test Cells/Standards source category across different demographic groups within the populations living near facilities.<sup>27</sup>

The results of the demographic analysis are summarized in Table 3 below. These results, for various demographic groups, are based on the estimated risk from actual emissions levels for the population living within 50 km of the facilities.

TABLE 3—ENGINE TEST CELLS/STANDS DEMOGRAPHIC RISK ANALYSIS RESULTS

Engine test cells/stands source category: Demographic assessment results—50 km study area radius			
		Population with cancer risk greater than or equal to 1 in 1 million	Population with HI greater than 1
	Nationwide	Source Category	
Total Population .....	317,746,049	2,745	0
White and Minority by Percent			
White .....	62	90	0
Minority .....	38	10	0
Minority by Percent			
African American .....	12	3	0
Native American .....	0.8	0.4	0
Hispanic or Latino (includes white and nonwhite) .....	18	2	0
Other and Multiracial .....	7	4	0
Income by Percent			
Below Poverty Level .....	14	13	0
Above Poverty Level .....	86	87	0
Education by Percent			
Over 25 and without a High School Diploma .....	14	9	0
Over 25 and with a High School Diploma .....	86	91	0
Linguistically Isolated by Percent			
Linguistically Isolated .....	6	2	0

The results of the Engine Test Cells/Standards source category demographic analysis indicate that emissions from the source category expose approximately 2,700 people to a cancer risk at or above 1-in-1 million and no people to a chronic noncancer TOSHI greater than 1. Regarding cancer risk, the specific demographic results indicate that the percentage of the population potentially impacted by engine test cells/stands emissions is

greater than its corresponding nationwide percentage for the following demographics: Above Poverty Level (87 percent for the source category compared to 86 percent nationwide), and Over 25 and with a High School Diploma (91 percent for the source category compared to 86 percent nationwide). The remaining demographic group percentages are the same or less than the corresponding nationwide percentages.

The methodology and the results of the demographic analysis are presented in a technical report, *Risk and Technology Review—Analysis of Demographic Factors for Populations Living Near Engine Test Cells/Standards Source Category Operations*, available in the docket for this action.

<sup>27</sup> Demographic groups included in the analysis are: White, African American, Native American, other races and multiracial, Hispanic or Latino,

children 17 years of age and under, adults 18 to 64 years of age, adults 65 years of age and over, adults without a high school diploma, people living below

the poverty level, people living two times the poverty level, and linguistically isolated people.

*B. What are our proposed decisions regarding risk acceptability, ample margin of safety, and adverse environmental effect?*

#### 1. Risk Acceptability

As noted in section III of this preamble, the EPA sets standards under CAA section 112(f)(2) using “a two-step standard-setting approach, with an analytical first step to determine an ‘acceptable risk’ that considers all health information, including risk estimation uncertainty, and includes a presumptive limit on MIR of approximately 1-in-10 thousand” (see 54 FR 38045, September 14, 1989). In this proposal, the EPA estimated risks based on actual and allowable emissions from engine test cells/stands located at major sources of HAP, and we considered these in determining acceptability.

The estimated inhalation cancer risk to the individual most exposed to actual or allowable emissions from the source category is 70-in-1 million. The estimated incidence of cancer due to inhalation exposures is 0.02 excess cancer cases per year, or one excess case every 50 years. Approximately 190,000 people face an increased cancer risk at or above 1-in-1 million due to inhalation exposure to actual or allowable HAP emissions from this source category. The estimated maximum chronic noncancer TOSHI from inhalation exposure for this source category is 0.5. The screening assessment of worst-case inhalation impacts indicates a worst-case maximum acute HQ of 9 for acrolein based on the 1-hour REL and concentrations that are only 30 percent of the 1-hour AEGL-1 and ERPG-1.

Potential multipathway human health risks were estimated using a 3-tier screening assessment of the PB-HAP emitted by facilities in this source category. The only pollutant with elevated Tier 1 and Tier 2 screening values was arsenic, which is a carcinogen. The Tier 2 screening value for arsenic was 2. For noncancer, the Tier 2 screening values for all pollutants were less than 1.

In determining whether risks are acceptable for this source category, the EPA considered all available health information and risk estimation uncertainty as described above. The risk results indicate that both the actual and allowable inhalation cancer risks to the individual most exposed are well below 100-in-1 million, which is the presumptive limit of acceptability. In addition, the highest chronic noncancer TOSHI is well below 1, indicating low likelihood of adverse noncancer effects

from inhalation exposures. The maximum acute HQ for all pollutants is 9 based on the REL for acrolein. As discussed in section III.C.3.c of this preamble, exceeding the REL does not automatically indicate an adverse health impact. Because of the conservative nature of the acute inhalation screening assessment (concurrent maximum emissions from all emission points, worst-case meteorology, and an exposed person at the location of highest concentration for a full hour), there is low probability that the maximum HQ of 9 is associated with adverse health effects. Further, the highest 1-hour acrolein concentration is only 30 percent of the 1-hour AEGL-1 and ERPG-1. There are also low risks associated with ingestion via multipathway exposure, with the highest cancer risk being 2-in-1 million and the highest noncancer HI being less than 1, based on a Tier 2 multipathway assessment.

Considering all the health risk information and factors discussed above, including the uncertainties discussed in section III of this preamble, the EPA proposes that the risks are acceptable for this source category.

#### 2. Ample Margin of Safety Analysis

As directed by CAA section 112(f)(2), we conducted an analysis to determine whether the current emissions standards provide an ample margin of safety to protect public health. Under the ample margin of safety analysis, the EPA considers all health factors evaluated in the risk assessment and evaluates the cost and feasibility of available control technologies and other measures (including the controls, measures, and costs reviewed under the technology review) that could be applied to this source category to further reduce the risks (or potential risks) due to emissions of HAP identified in our risk assessment. In this analysis, we considered the results of the technology review, risk assessment, and other aspects of our MACT rule review to determine whether there are any emission reduction measures necessary to provide an ample margin of safety with respect to the risks associated with these emissions.

Our risk analysis indicated the risks from the source category are low for both cancer and noncancer health effects, and, therefore, any risk reductions from further available control options would result in minimal health benefits. Moreover, as noted in our discussion of the technology review in section IV.C of this preamble, no additional cost-effective measures were identified for reducing HAP emissions

from affected sources in the Engine Test Cells/Standards source category. Thus, we are proposing that the current Engine Test Cells/Standards NESHAP provides an ample margin of safety to protect public health.

#### 3. Adverse Environmental Effect

Based on the results of our environmental risk screening assessment, we conclude that there is not an adverse environmental effect from the Engine Test Cells/Standards source category. We are proposing that it is not necessary to set a more stringent standard to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect.

*C. What are the results and proposed decisions based on our technology review?*

#### 1. How did we evaluate technological developments?

Section 112(d)(6) of the CAA requires a review of “developments in practices, processes and control technologies” in each source category as part of the technology review process. For this technology review, the “developments” we consider include:

- Add-on control technology that was not identified during the current NESHAP development;
- Improvement to an existing add-on control technology resulting in significant additional HAP emissions reductions;
- Work practice or operational procedure that was not previously identified during the current NESHAP development; or
- Process change or pollution prevention alternative that was not identified and considered during the current NESHAP development.

Developments in practices, processes, and control technologies were investigated through discussions with industry representatives, reviews of available construction and operating permits, searches of the EPA’s RBLC, site visits, and literature searches. We also included questions on developments in practices, processes, and control technology in this source category in the 2016 questionnaire that was completed by 10 companies. The questionnaire, along with the responses received, are included in the docket.

#### 2. What was our analysis and what are our conclusions regarding technological developments?

Our review of the practices, processes, and control technology for the Engine Test Cells/Standards source category did

not reveal any development that would result in revisions to the emission standards. In the original NESHAP, the technology basis for the MACT standard was the use of add-on capture systems and control devices (*i.e.*, thermal oxidizers or catalytic oxidizers). Our review did not identify any new or improved add-on control technology, any new work practices, operational procedures, process changes, or new pollution prevention approaches that reduce emissions in the category that have been implemented at engine testing operations since promulgation of the current NESHAP. Consequently, we propose that no revisions to the NESHAP are necessary pursuant to CAA section 112(d)(6). For a detailed discussion of the findings, refer to the *Technology Review for the Engine Test Cells/Standards Source Category* memorandum in the docket.

#### D. What other actions are we proposing?

In addition to the proposed actions described above, we are proposing additional revisions to the NESHAP. We are proposing revisions to the SSM provisions of the MACT rule in order to ensure that they are consistent with the Court decision in *Sierra Club v. EPA*, 551 F. 3d 1019 (D.C. Cir. 2008), which vacated two provisions that exempted sources from the requirement to comply with otherwise applicable CAA section 112(d) emission standards during periods of SSM. We also are proposing to require electronic submittal of notifications, semiannual reports, and compliance reports (which include performance test reports). Our analyses and proposed changes related to these issues are discussed below.

#### 1. SSM

In its 2008 decision in *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. 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.

We are proposing the elimination of the SSM exemption in this rule, which appears at 40 CFR 63.9305, 40 CFR 63.9340, and in Table 7 to subpart PPTPP of 40 CFR part 63. Consistent with *Sierra Club v. EPA*, we are proposing standards in this rule that apply at all times. We are also proposing

several revisions to Table 7 (the General Provisions Applicability Table) as is explained in more detail below. For example, we are proposing to eliminate the incorporation of the General Provisions' requirement that the source develop an SSM plan. We also are proposing to eliminate and revise certain recordkeeping and reporting requirements related to the SSM exemption as further described below.

The EPA has attempted to ensure that the provisions we are proposing to eliminate are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether we have successfully done so. The EPA believes the removal of the SSM exemption creates no additional burden to facilities regulated under the Engine Test Cells/Standards NESHAP. Deviations currently addressed by a facility's SSM plan are required to be reported in the Semiannual Compliance Report, a requirement that remains under the proposal (40 CFR 63.9350). Facilities will no longer need to develop an SSM plan or keep it current (Table 7, 40 CFR part 63, subpart PPTPP). We are specifically seeking comment on whether we have successfully removed the SSM exemption.

In proposing the standards in this rule, the EPA has taken into account startup and shutdown periods and, for the reasons explained below, is not proposing alternate standards for those periods. For add-on control systems, the Engine Test Cells/Standards NESHAP requires the measurement of thermal oxidizer operating temperature or catalytic oxidizer average temperature across the catalyst bed as well as the measurement of the emission capture system volumetric flow rate or facial velocity. Operating limits apply at all times (40 CFR 63.9302), including during periods of startup and shutdown. The Engine Test Cells/Standards NESHAP requires thermal oxidizer or catalytic oxidizer operating temperature and other add-on control device operating parameters to be recorded at least once every 15 minutes. The Engine Test Cells/Standards NESHAP specifies in 40 CFR 63.9340(b) that if an operating parameter is out of the allowed range, this is a deviation from the operating limit and must be reported as specified in 40 CFR 63.9350(d). Review of permits of facilities using add-on controls indicated that they were required by permit to operate the add-on controls at all times the engine test cells are being operated.

In proposing these rule amendments, the EPA has taken into account startup and shutdown periods and, for the

reasons explained below, has not proposed alternate standards for those periods. Startups and shutdowns are part of normal operations for the Engine Test Cells/Standards source category. As currently specified in 40 CFR 63.9302(a), any new or reconstructed affected source for which you use add-on control option must meet operating limits "at all times." This means that during startup and shutdown periods, in order for a facility using add-on controls to meet the emission and operating standards, the control device for an engine test cell/stand facility needs to be turned on and operating at specified levels before the facility begins engine testing operations, and the control equipment needs to continue to be operated until after the facility ceases engine testing operations.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. Malfunctions, in contrast, are neither predictable nor routine. Instead they are, by definition, sudden, infrequent, and not reasonably preventable failures of emissions control, process, or monitoring equipment. (40 CFR 63.2, definition of malfunction). 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 and this reading has been upheld as reasonable by the Court in *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 606–610 (2016). Under CAA section 112, emissions standards for new sources must be no less stringent than the level "achieved" by the best controlled similar source and for existing sources generally must be no less stringent than the average emission limitation "achieved" by the best performing 12 percent of sources in the category. There is nothing in CAA section 112 that directs the Agency to consider malfunctions in determining the level "achieved" by the best performing sources when setting emission standards. As the Court has recognized, the phrase "average emissions limitation achieved by the best performing 12 percent of" sources "says nothing about how the performance of the best units is to be calculated." *National Association of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1141 (D.C. Cir. 2013). While the EPA accounts for variability in setting emissions standards, nothing in CAA section 112 requires the Agency to consider malfunctions as part of that analysis. The EPA is not required to treat a malfunction in the same manner as the type of variation in performance

that occurs during routine operations of a source. A malfunction is a failure of the source to perform in “normal or usual manner” and no statutory language compels the EPA to consider such events in setting CAA section 112 standards.

As the Court recognized in *U.S. Sugar Corp.*, accounting for malfunctions in setting standards would be difficult, if not impossible, given the myriad different types of malfunctions that can occur across all sources in the category and given the difficulties associated with predicting or accounting for the frequency, degree, and duration of various malfunctions that might occur. *Id.* at 608 (“the EPA would have to conceive of a standard that could apply equally to the wide range of possible boiler malfunctions, ranging from an explosion to minor mechanical defects. Any possible standard is likely to be hopelessly generic to govern such a wide array of circumstances.”) As such, the performance of units that are malfunctioning is not “reasonably” foreseeable. See, for example, *Sierra Club v. EPA*, 167 F.3d 658, 662 (D.C. Cir. 1999). “The EPA typically has wide latitude in determining the extent of data gathering necessary to solve a problem. We generally defer to an agency’s decision to proceed on the basis of imperfect scientific information, rather than to ‘invest the resources to conduct the perfect study.’” See also, *Weyerhaeuser v. Costle*, 590 F.2d 1011, 1058 (D.C. Cir. 1978), “In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by ‘uncontrollable acts of third parties,’ such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.” In addition, emissions during a malfunction event can be significantly higher than emissions at any other time of source operation. For example, if an air pollution control device with 99-percent removal goes offline as a result of a malfunction (as might happen if, for example, the bags in a baghouse catch fire) and the emission unit is a steady state type unit that would take days to shut down, the source would go from 99-percent control to zero control until the control device was repaired. The source’s emissions during the malfunction would be 100 times higher than during normal operations. As such, the emissions over a 4-day malfunction

period would exceed the annual emissions of the source during normal operations. As this example illustrates, accounting for malfunctions could lead to standards that are not reflective of (and significantly less stringent than) levels that are achieved by a well-performing non-malfunctioning source. It is reasonable to interpret CAA section 112 to avoid such a result. The EPA’s approach to malfunctions is consistent with CAA section 112 and is a reasonable interpretation of the statute.

Although no statutory language compels the EPA to set standards for malfunctions, the EPA has the discretion to do so where feasible. For example, in the Petroleum Refinery Sector RTR, the EPA established a work practice standard for unique types of malfunction that result in releases from pressure relief devices or emergency flaring events because information was available to determine that such work practices reflected the level of control that applies to the best performers (80 FR 75178, 75211–14; December 1, 2015). The EPA will consider whether circumstances warrant setting standards for a particular type of malfunction and, if so, whether the EPA has sufficient information to identify the relevant best performing sources and establish a standard for such malfunctions. We also encourage commenters to provide any such information.

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source’s failure to comply with the CAA section 112(d) standard was, in fact, sudden, infrequent, not reasonably preventable, and was not instead caused in part by poor maintenance or careless operation. 40 CFR 63.2 (definition of malfunction).

If the EPA determines in a particular case that an enforcement action against a source for violation of an emission standard is warranted, the source can raise any and all defenses in that enforcement action and the federal district court will determine what, if any, relief is appropriate. The same is true for citizen enforcement actions. Similarly, the presiding officer in an administrative proceeding can consider any defense raised and determine whether administrative penalties are appropriate.

In summary, the EPA interpretation of the CAA and, in particular, CAA section 112 is reasonable and encourages practices that will avoid malfunctions. 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. *U.S. Sugar Corporation v. EPA* (830 F.3d 579, 606–610; D.C. Cir. 2016).

#### a. General Duty

We are proposing to revise the General Provisions table (Table 7) entry for 40 CFR 63.6(e)(1)–(2) by redesignating it as 40 CFR 63.6(e)(1)(i) and changing the “yes” in column 3 to a “no.” Section 63.6(e)(1)(i) describes the general duty to minimize emissions. Some of the language in that section is no longer necessary or appropriate in light of the elimination of the SSM exemption. We are proposing instead to add general duty regulatory text at 40 CFR 63.9305 that reflects the general duty to minimize emissions while eliminating the reference to periods covered by an SSM exemption. The current language in 40 CFR 63.6(e)(1)(i) characterizes what the general duty entails during periods of SSM. With the elimination of the SSM exemption, there is no need to differentiate between normal operations and SSM events in describing the general duty. Therefore, the language the EPA is proposing for 40 CFR 63.9305 does not include that language from 40 CFR 63.6(e)(1).

We are also proposing to revise Table 7 to add an entry for 40 CFR 63.6(e)(1)(ii) and include a “no” in column 3. Section 63.6(e)(1)(ii) imposes requirements that are not necessary with the elimination of the SSM exemption or are redundant with the general duty requirement being added at 40 CFR 63.9305.

We are also proposing to revise Table 7 to add an entry for 40 CFR 63.6(e)(1)(iii) and include a “yes” in column 3.

Finally, we are proposing to revise Table 7 to remove an entry for 40 CFR 63.6(e)(2) because this paragraph is reserved and is not applicable to 40 CFR part 63, subpart P. P. P. P. P.

#### b. SSM Plan

We are proposing to revise Table 7 to add an entry for 40 CFR 63.6(e)(3) and include a “no” in column 3. Generally, these paragraphs require development of an SSM plan and specify SSM recordkeeping and reporting requirements related to the SSM plan. As noted, the EPA is proposing to remove the SSM exemptions. Therefore,

affected units will be subject to an emission standard during such events. The applicability of a standard during such events will ensure that sources have ample incentive to plan for and achieve compliance and, thus, the SSM plan requirements are no longer necessary.

#### c. Compliance With Standards

We are proposing to revise Table 7 entry for 40 CFR 63.6(f)(1) by changing the “yes” in column 3 to a “no.” The current language of 40 CFR 63.6(f)(1) exempts sources from non-opacity standards during periods of SSM. As discussed above, the Court in *Sierra Club* vacated the exemptions contained in this provision and held that the CAA requires that some CAA section 112 standards apply continuously. Consistent with *Sierra Club*, the EPA is proposing to revise standards in this rule to apply at all times.

#### d. Performance Testing

We are proposing to revise Table 7 entry for 40 CFR 63.7(e)(1) by changing the “yes” in column 3 to a “no.” Section 63.7(e)(1) describes performance testing requirements. The EPA is instead proposing to revise the performance testing requirement at 40 CFR 63.9321 to remove the language “according to the requirements in § 63.7(e)(1)” because 40 CFR 63.7(e)(1) restated the SSM exemption. 40 CFR 63.9321(a) of the current rule specifies that performance testing must be conducted when the emission capture system and add-on control device are operating at a representative flow rate, and the add-on control device is operating at a representative inlet concentration. Section 63.9321(a) also specifies that the performance test be conducted under representative operating conditions for the engine test cell/stand. Operations during periods of SSM, and during periods of nonoperation do not constitute representative operating conditions. The EPA is proposing to add language that requires the owner or operator to 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. Section 63.7(e) requires that the owner or operator make available to the Administrator such records “as may be necessary to determine the condition of the performance test” available to the Administrator upon request but does not specifically require the information to be recorded. The regulatory text in the current rule already makes explicit

the requirement to record the information.

#### e. Monitoring

We are proposing to revise Table 7 entries for 40 CFR 63.8(c)(1)(i) and 40 CFR 63.8(c)(1)(iii) by changing the “yes” in column 3 to a “no.” The cross-references to the general duty and SSM plan requirements in those subparagraphs are not necessary considering other requirements of 40 CFR 63.8 that require good air pollution control practices (40 CFR 63.8(c)(1)) and that set out the requirements of a quality control program for monitoring equipment (40 CFR 63.8(d)).

#### f. Recordkeeping

We are proposing to revise the Table 7 entry for 40 CFR 63.10(b)(2)(i) by changing the “yes” in column 3 to a “no.” Section 63.10(b)(2)(i) describes the recordkeeping requirements during startup and shutdown. These recording provisions are no longer necessary because the EPA is proposing that recordkeeping and reporting applicable to normal operations will apply to startup and shutdown. In the absence of special provisions applicable to startup and shutdown, such as a startup and shutdown plan, there is no reason to retain additional recordkeeping for startup and shutdown periods.

We are proposing to revise the Table 7 entry for 40 CFR 63.10(b)(2)(ii) by changing the “yes” in column 3 to a “no.” Section 63.10(b)(2)(ii) describes the recordkeeping requirements during a malfunction. A similar record is already required in 40 CFR 63.9350(c). The regulatory text in 40 CFR 63.9350(c) differs from the General Provisions in that the General Provisions requires the creation and retention of a record of the occurrence and duration of each malfunction of process, air pollution control, and monitoring equipment; whereas 40 CFR 63.9350(c) applies to any failure to meet an applicable standard and is requiring that the source record the date, time, and duration of the failure rather than the “occurrence.” The EPA is also proposing to add to 40 CFR 63.9350(c) a requirement that sources keep records that include a list of the affected source or equipment and actions taken to minimize emissions, an estimate of the quantity of each regulated pollutant emitted over the standard for which the source failed to meet the standard, and a description of the method used to estimate the emissions. Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known

process parameters. The EPA is proposing to require that sources keep records of this information to ensure that there is adequate information to allow the EPA to determine the severity of any failure to meet a standard, and to provide data that may document how the source met the general duty to minimize emissions when the source has failed to meet an applicable standard.

We are proposing to revise the Table 7 by adding an entry for 40 CFR 63.10(b)(2)(iv) and including a “no” in column 3. When applicable, the provision requires sources to record actions taken during SSM events when actions were inconsistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required. The requirement previously applicable under 40 CFR 63.10(b)(2)(iv)(B) to record actions to minimize emissions and record corrective actions is now applicable by reference to 40 CFR 63.9355(a).

We are proposing to revise Table 7 by adding an entry for 40 CFR 63.10(b)(2)(v) and including a “no” in column 3. When applicable, the provision requires sources to record actions taken during SSM events to show that actions taken were consistent with their SSM plan. The requirement is no longer appropriate because SSM plans will no longer be required.

We are proposing to revise Table 7 entry for 40 CFR 63.10(c)(1)–(6), (9)–(15) by re-designating it as 40 CFR 63.10(c)(1)–(6), (9)–(14) and adding an entry for 40 CFR 63.10(c)(15) and including a “no” in column 3. The EPA is proposing that 40 CFR 63.10(c)(15) no longer apply. When applicable, the provision allows an owner or operator to use the affected source’s SSM plan or records kept to satisfy the recordkeeping requirements of the SSM plan, specified in 40 CFR 63.6(e), to also satisfy the requirements of 40 CFR 63.10(c)(10) through (12). The EPA is proposing to eliminate this requirement because SSM plans would no longer be required, and, therefore, 40 CFR 63.10(c)(15) no longer serves any useful purpose for affected units.

#### g. Reporting

We are proposing to revise Table 7 entry for 40 CFR 63.10(d)(5) by changing the “yes” in column 3 to a “no.” Section 63.10(d)(5) describes the reporting requirements for startups, shutdowns, and malfunctions. To replace the General Provisions reporting requirement, the EPA is proposing to add reporting requirements to 40 CFR 63.9350. The replacement language differs from the General Provisions

requirement in that it eliminates periodic SSM reports as a stand-alone report. We are proposing language that requires sources that fail to meet an applicable standard at any time to report the information concerning such events in the semi-annual compliance report already required under this rule. We are proposing that the report must also contain the number, date, time, duration, and the cause of such events (including unknown cause, if applicable), a list of the affected source or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

Examples of such methods would include product-loss calculations, mass balance calculations, measurements when available, or engineering judgment based on known process parameters. The EPA is proposing this requirement to ensure that there is adequate information to determine compliance, to allow the EPA to determine the severity of the failure to meet an applicable standard, and to provide data that may document how the source met the general duty to minimize emissions during a failure to meet an applicable standard.

We will no longer require owners or operators to determine whether actions taken to correct a malfunction are consistent with an SSM plan, because plans would no longer be required. The proposed amendments, therefore, eliminate the cross-reference to 40 CFR 63.10(d)(5)(i) that contains the description of the previously required SSM report format and submittal schedule from this section. These specifications are no longer necessary because the events will be reported in otherwise required reports with similar format and submittal requirements. Section 63.10(d)(5)(ii) describes an immediate report for startups, shutdowns, and malfunctions when a source failed to meet an applicable standard but did not follow the SSM plan. We will no longer require owners and operators to report when actions taken during a startup, shutdown, or malfunction were not consistent with an SSM plan because plans would no longer be required.

## 2. Electronic Reporting Requirements

Through this proposal, the EPA is proposing that owners and operators of engine test cells/stands submit electronic copies of required performance test reports, performance evaluation reports, and semiannual compliance reports through the EPA's Central Data Exchange (CDX) using the

Compliance and Emissions Data Reporting Interface (CEDRI). A description of the electronic data submission process is provided in the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Rules*, available in Docket ID No. EPA-HQ-OAR-2018-0753. The proposed rule requires that performance test results collected using test methods that are supported by the EPA's Electronic Reporting Tool (ERT) as listed on the ERT website<sup>28</sup> at the time of the test be submitted in the format generated through the use of the ERT and that other performance test results be submitted in portable document format (PDF) using the attachment module of the ERT. Similarly, performance evaluation results of continuous monitoring systems (CMS) measuring relative accuracy test audit (RATA) pollutants that are supported by the ERT at the time of the test must be submitted in the format generated through the use of the ERT and other performance evaluation results be submitted in PDF using the attachment module of the ERT.

For the semiannual compliance reports the proposed rule requires that owners and operators use the appropriate spreadsheet template to submit information to CEDRI. A draft version of the proposed template for these reports is included in the docket for this rulemaking.<sup>29</sup> The EPA specifically requests comment on the content, layout, and overall design of the template.

Additionally, the EPA has identified two broad circumstances in which electronic reporting extensions may be provided. In both circumstances, the decision to accept the claim of needing additional time to report is within the discretion of the Administrator, and reporting should occur as soon as possible. The EPA is providing these potential extensions to protect owners and operators from noncompliance in cases where they cannot successfully submit a report by the reporting deadline for reasons beyond their control. The situation where an extension may be warranted due to outages of either the EPA's CDX or CEDRI which precludes an owner or operator from accessing the system and submitting required reports is addressed

in proposed 40 CFR 63.9350(i). The situation where an extension may be warranted due to a force majeure event, which 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 an owner or operator from complying with the requirement to submit a report electronically as required by this rule is addressed in proposed 40 CFR 63.9350(j). Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazards beyond the control of the facility.

The electronic submittal of the reports addressed in this proposed rulemaking, when finalized, will increase the usefulness of the data contained in those reports, is in keeping with current trends in data availability and transparency, will further assist in the protection of public health and the environment, will improve compliance by facilitating the ability of regulated facilities to demonstrate compliance with requirements and by facilitating the ability of delegated state, local, tribal, and territorial air agencies and the EPA to assess and determine compliance, and will ultimately reduce burden on regulated facilities, delegated air agencies, and the EPA. Electronic reporting also eliminates paper-based, manual processes, thereby saving time and resources, simplifying data entry, eliminating redundancies, minimizing data reporting errors, and providing data quickly and accurately to the affected facilities, air agencies, the EPA, and the public. Moreover, electronic reporting is consistent with the EPA's plan<sup>30</sup> to implement Executive Order 13563 and is in keeping with the EPA's Agency-wide policy<sup>31</sup> developed in response to the White House's Digital Government Strategy.<sup>32</sup> For more information on the benefits of electronic reporting, see the memorandum, *Electronic Reporting Requirements for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP)*

<sup>28</sup> EPA's *Final Plan for Periodic Retrospective Reviews*, August 2011. Available at: <https://www.regulations.gov/document?D=EPA-HQ-OA-2011-0156-0154>.

<sup>31</sup> *E-Reporting Policy Statement for EPA Regulations*, September 2013. Available at: <https://www.epa.gov/sites/production/files/2016-03/documents/epa-ereporting-policy-statement-2013-09-30.pdf>.

<sup>32</sup> *Digital Government: Building a 21st Century Platform to Better Serve the American People*, May 2012. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/egov/digital-government/digital-government.html>.

<sup>28</sup> <https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>.

<sup>29</sup> See *Engine Test Cells Semiannual Spreadsheet Template Draft*, available at Docket ID No. EPA-HQ-OAR-2018-0753.

Rules, available in Docket ID No. EPA–HQ–OAR–2018–0753.

### 3. Technical and Editorial Changes

The following are additional proposed changes that address technical and editorial correction:

- Revising the monitoring requirements in 40 CFR 63.9307 to add THC as a continuous emission monitoring option and to add Performance Specification 8A and EPA Method 25A;
- Revising the initial compliance requirements in 40 CFR 63.9320 to include a provision for the performance test to be used to demonstrate compliance;
- Revising Tables 3 and 4 to 40 CFR part 63, subpart P, to add alternative compliance option; and
- Revising section 40 CFR 63.9350 to address the reporting of performance tests and performance evaluations.

#### *E. What compliance dates are we proposing?*

The EPA is proposing that existing affected sources must comply with the amendments in this rulemaking no later than 180 days after the effective date of the final rule. The EPA is also proposing that affected sources that commence construction or reconstruction after May 8, 2019 must comply with all requirements of the subpart, including the amendments being proposed, no later than the effective date of the final rule or upon startup, whichever is later. All affected existing facilities would have to continue to meet the current requirements of 40 CFR part 63, subpart P, until the applicable compliance date of the amended rule. The final action is not expected to be a “major rule” as defined by 5 U.S.C. 804(2), therefore, the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10). For existing affected sources, we are proposing two changes that would impact ongoing compliance requirements for 40 CFR part 63, subpart P. As discussed elsewhere in this preamble, we are proposing to add a requirement that notifications, performance test results, and the semiannual reports using the new template be submitted electronically. We are also proposing to change the requirements for SSM by removing the exemption from the requirements to meet the standard during SSM periods and by removing the requirement to develop and implement an SSM plan. Our experience with similar industries that have been required to convert reporting mechanisms, install necessary hardware, install necessary software,

become familiar with the process of submitting performance test results electronically through the EPA’s CEDRI, test these new electronic submission capabilities, reliably employ electronic reporting, and convert logistics of reporting processes to different time-reporting parameters, shows that a time period of a minimum of 90 days, and more typically 180 days, is generally necessary to successfully complete these changes. Our experience with similar industries further shows that this sort of regulated facility generally requires a time period of 180 days to read and understand the amended rule requirements; evaluate their operations to ensure that they can meet the standards during periods of startup and shutdown as defined in the rule and make any necessary adjustments; adjust parameter monitoring and recording systems to accommodate revisions; and update their operations to reflect the revised requirements. The EPA recognizes the confusion that multiple different compliance dates for individual requirements would create and the additional burden such an assortment of dates would impose. From our assessment of the timeframe needed for compliance with the entirety of the revised requirements, the EPA considers a period of 180 days to be the most expeditious compliance period practicable, and, thus, is proposing that existing affected sources be in compliance with all of this regulation’s revised requirements within 180 days of the regulation’s effective date. We solicit comment on this proposed compliance period, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended requirements and the time needed to make the adjustments for compliance with any of the revised requirements. We note that information provided may result in changes to the proposed compliance date.

### **V. Summary of Cost, Environmental, and Economic Impacts**

#### *A. What are the affected sources?*

There are currently 59 engine test cells/stands facilities operating in the United States that conduct engine testing operations and are subject to the Engine Test Cells/Standards NESHAP. The 40 CFR part 63, subpart P, affected source is the collection of all equipment and activities associated with engine test cells/stands used for testing uninstalled stationary or uninstalled mobile engines located at a major source

of HAP emissions. A new or reconstructed affected source is a completely new engine testing source that commenced construction after May 14, 2002, or meets the definition of reconstruction and commenced reconstruction after May 14, 2002.

#### *B. What are the air quality impacts?*

At the current level of control, emissions of total HAP are estimated to be approximately 163 tpy. This represents a reduction in HAP emissions of about 80 tpy due to the current (2003) Engine Test Cells/Standards NESHAP. The proposed amendments will require all affected sources subject to the emission standards in the Engine Test Cells/Standards NESHAP to operate without the SSM exemption. We do not expect that eliminating the SSM exemption will result in reduced emissions since the NESHAP requires that the operating limits established during the performance test for demonstrating continuous compliance must be met at all times.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*i.e.*, increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment that would be required under this proposed rule. The EPA expects no secondary air emissions impacts or energy impacts from this rulemaking.

#### *C. What are the cost impacts?*

We estimate that each facility in the source category will experience costs as a result of these proposed amendments that are estimated as part of the reporting and recordkeeping costs. Each facility will experience costs to read and understand the rule amendments. Costs associated with the elimination of the SSM exemption were estimated as part of the reporting and recordkeeping costs and include time for re-evaluating previously developed SSM record systems. Costs associated with the requirement to electronically submit notifications and semi-annual compliance reports using CEDRI were estimated as part of the reporting and recordkeeping costs and include time for becoming familiar with CEDRI and the reporting template for semi-annual compliance reports. The recordkeeping and reporting costs are presented in section VIII.C of this preamble.

#### D. What are the economic impacts?

Economic impact analyses focus on changes in market prices and output levels. If changes in market prices and output levels in the primary markets are significant enough, impacts on other markets may also be examined. Both the magnitude of costs associated with the proposed requirements and the distribution of these costs among affected facilities can have a role in determining how the market will change in response to a proposed rule.

Based on the costs associated with the elimination of the SSM exemption and the costs associated with the requirement to electronically submit compliance reports presented in section VIII.C of this preamble, there are no significant economic impacts from these proposed amendments

#### E. What are the benefits?

The EPA did not propose changes to the emission limit requirements and estimates the proposed changes to SSM, recordkeeping, reporting, and monitoring are not economically significant. Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, and because no emission reductions were estimated, we did not estimate any benefits from reducing emissions.

#### VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the risk assessments and other analyses. We are specifically interested in receiving any improvements to the data used in the site-specific emissions profiles used for risk modeling. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information. Section VII of this preamble provides more information on submitting data.

We specifically solicit comment on an additional issue under consideration that could reduce regulatory burden for owners or operators of certain engine test cells/stands facilities. Currently, if an affected source owner or operator elects to comply with the percent reduction emission limitation, an initial performance test must be conducted to determine the capture and control efficiencies of the equipment and to establish the operating limits to be achieved on a continuous basis. Performance tests are to be conducted under representative operating

conditions and the source is required to document the operating conditions during the test and explain why the conditions represent normal operation. Industry stakeholders have raised the issue that, for facilities with multiple test cells/stands, it is difficult to define “normal” operation due to the several types of engine tests conducted, the varying operation conditions for the engine tests, the number of cells/stands, different kinds of test fuels, and the complex emission capture system. Thus, affected sources have felt the need to request approval on the testing protocol prior to conducting the performance tests to limit tests to representative cells. We are requesting comment on whether this process of requesting prior approval for determining what is considered “normal” operation for a specific affected facility is reasonable and appropriate for the one-time required performance test.

#### VII. Submitting Data Corrections

The site-specific emissions profiles used in the source category risk and demographic analyses and instructions are available for download on the RTR website at <https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html>. The data files include detailed information for each HAP emissions release point for the facilities in the source category.

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any “improved” data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes. To submit comments on the data downloaded from the RTR website, complete the following steps:

1. Within this downloaded file, enter suggested revisions to the data fields appropriate for that information.
2. Fill in the commenter information fields for each suggested revision (*i.e.*, commenter name, commenter organization, commenter email address, commenter phone number, and revision comments).
3. Gather documentation for any suggested emissions revisions (*e.g.*, performance test reports, material balance calculations).
4. Send the entire downloaded file with suggested revisions in Microsoft® Access format and all accompanying documentation to Docket ID No. EPA–HQ–OAR–2018–0753 (through the method described in the **ADDRESSES** section of this preamble).
5. If you are providing comments on a single facility or multiple facilities,

you need only submit one file for all facilities. The file should contain all suggested changes for all sources at that facility (or facilities). We request that all data revision comments be submitted in the form of updated Microsoft® Excel files that are generated by the Microsoft® Access file. These files are provided on the RTR website at <https://www3.epa.gov/ttn/atw/rrisk/rtrpg.html>.

#### VIII. 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 Order 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 expected to be 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 proposed rule have been submitted for approval to OMB under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2066.08. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing changes to the reporting and recordkeeping requirements for the Engine Test Cells/ Stands NESHAP in the form of eliminating the SSM reporting and SSM plan requirements and requiring electronic submittal of all compliance reports (including performance test reports). Any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

*Respondents/affected entities:* Respondents are owners and operators of engine test cells/stands facilities subject to the Engine Test Cells/ Standards NESHAP.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart P P P P P).

*Estimated number of respondents:* On average over the next 3 years, approximately 12 existing major sources will be subject to these standards, of which seven are subject to emission limits, monitoring, recordkeeping, and reporting requirements. It is also estimated that one additional respondent will become subject to the emission standards over the 3-year period and two additional respondents will be subject only to the notification requirements.

*Frequency of response:* The average number of respondents over the 3-year period of this ICR is eight.

*Total estimated burden:* The average annual burden to industry over the next 3 years from these recordkeeping and reporting requirements is estimated to be 1,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* The total capital/startup costs for this ICR are \$500. The total operation and maintenance (O&M) costs for this ICR are \$2,400. The average annual cost for capital/startup and O&M costs to industry over the next 3 years of the ICR is estimated to be \$2,900. These are the recordkeeping costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs via email to *OIRA\_submission@omb.eop.gov*. Attention: Desk Officer for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after receipt, OMB must receive comments no later than June 7, 2019. The EPA will respond to any ICR-related comments in the 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. During the original rulemaking, an ICR was sent to

over 100 companies representing over 300 individual facilities. Using that information, along with discussion with industry stakeholders, it was determined that there were no major sources that were also small businesses. Thus, this action will not impose any requirements on small entities.

#### *E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate 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. The action affects private industry and does not impose economic costs on state or local governments.

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

This action does not have tribal implications as specified in Executive Order 13175. The EPA does not know of any engine test cell/stand facilities owned or operated by Indian tribal governments. 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 this preamble and further documented in the risk report titled *Residual Risk Assessment for the Engine Test Cells/Stands Source Category in Support of the 2019 Risk and Technology Review Proposed Rule*, which is available 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 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 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 IV.B of this preamble and the technical report, *Risk and Technology Review Analysis of Demographic Factors for Populations Living Near Engine Test Cells/Stands Source Category Operations*.

#### **List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Engine test cells/stands, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: April 25, 2019.

**Andrew R. Wheeler,**  
Administrator.

For the reasons stated in the preamble, 40 CFR part 63 is proposed to be 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 P P P P P—[Amended]**

- 2. Section 63.9295 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (a)(3) to read as follows:

#### **§ 63.9295 When do I have to comply with this subpart?**

(a) *Affected sources.* (1) If you start up your new or reconstructed affected source before May 27, 2003, you must comply with the emission limitations in this subpart no later than May 27, 2003;

except that the compliance date for the revised requirements promulgated at §§ 63.9295, 63.9305, 63.9340, 63.9350, 63.9355, 63.9375, and Table 7 of 40 CFR part 63, subpart P, published on [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] is [DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) If you start up your new or reconstructed affected source on or after May 27, 2003, you must comply with the emission limitations in this subpart upon startup; except that if the initial startup of your new or reconstructed affected source occurs after May 27, 2003, but on or before May 8, 2019, the compliance date for the revised requirements promulgated at §§ 63.9295, 63.9305, 63.9340, 63.9350, 63.9355, 63.9375, and Table 7 of this subpart published on [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] is [DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(3) If the initial startup of your new or reconstructed affected source occurs after May 8, 2019, the compliance date is [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] or the date of startup, whichever is later.

\* \* \* \* \*

■ 3. Section 63.9305 is revised to read as follows:

**§ 63.9305 What are my general requirements for complying with this subpart?**

(a) Prior to [DATE 181 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], You must be in compliance with the emission limitation that applies to you at all times, except during periods of startup, shutdown, or malfunction (SSM) of your control device or associated monitoring equipment. After [DATE 180 DAYS AFTER PUBLICATION OF FINAL RULE IN THE **Federal Register**], you must be in compliance with the applicable emission limitation at all times.

(b) If you must comply with the emission limitation, you must operate and maintain your engine test cell/stand, air pollution control equipment, and monitoring equipment in a manner consistent with safety and good air pollution control practices for minimizing emissions at all times. 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.

(c) For affected sources until [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], You must develop a written SSM plan (SSMP) for emission control devices and associated monitoring equipment according to the provisions in § 63.6(e)(3). The plan will apply only to emission control devices, and not to engine test cells/stands.

■ 4. Section 63.9307 is amended by revising paragraphs (c)(1), (2), and (4) to read as follows:

**§ 63.9307 What are my continuous emissions monitoring system installation, operation, and maintenance requirements?**

\* \* \* \* \*

(c) To comply with either emission limitations, the CEMS must be installed and operated according to the requirements described in paragraphs (c)(1) through (4) of this section.

(1) You must install, operate, and maintain each CEMS according to the applicable Performance Specification (PS) of 40 CFR part 60, appendix B (PS-3, PS-4A, or PS-8).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in 40 CFR 63.8 and according to PS-3 of 40 CFR part 60, appendix B, using Reference Method 3A or 3B for the O<sub>2</sub> CEMS, and according to PS-4A of 40 CFR part 60, appendix B, using Reference Method 10 or 10B for the CO CEMS, and according to PS-8 of CFR part 60, Appendix B, using Reference Method 25A for the THC CEMS. If the fuel used in the engines being tested is natural gas, you may use ASTM D 6522-00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide and Oxygen Concentrations in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers (incorporated by reference, see § 63.14). As an alternative to Method 3B, you may use ANSI/ASME PTC 19.10-1981, "Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus]," (incorporated by reference, see § 63.14).

\* \* \* \* \*

(4) All CEMS data must be reduced as specified in § 63.8(g)(2) and recorded as CO or THC as carbon concentration in parts per million by volume, dry basis

(ppmvd), corrected to 15 percent O<sub>2</sub> content.

\* \* \* \* \*

■ 5. Section 63.9320 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 63.9320 What procedures must I use?**

\* \* \* \* \*

(b) You must conduct an initial performance evaluation of each capture and control system according to §§ 63.9321, 63.9322, 63.9323 and 63.9324, and each CEMS according to the requirements in 40 CFR 63.8 and according to the applicable Performance Specification of 40 CFR part 60, appendix B (PS-3, PS-4A, or PS-8).

(c) The initial demonstration of compliance with the carbon monoxide (CO) or total hydrocarbon (THC) concentration limitation consists of either the first 4-hour rolling average CO or THC concentration recorded after completion of the CEMS performance evaluation if CEMS are installed or the average of the test run averages during the initial performance test. You must correct the CO or THC concentration at the outlet of the engine test cell/stand or the emission control device to a dry basis and to 15 percent O<sub>2</sub> content according to Equation 1 of this section:

$$C_c = C_{unc} \left[ \frac{5.9}{(20.9 - \%O_{2d})} \right]$$

Where:

C<sub>c</sub> = concentration of CO or THC, corrected to 15 percent oxygen, ppmvd

C<sub>unc</sub> = total uncorrected concentration of CO or THC, ppmvd

%O<sub>2d</sub> = concentration of oxygen measured in gas stream, dry basis, percent by volume

\* \* \* \* \*

■ 6. Section 63.9330 is amended by revising paragraph (a) to read as follows:

**§ 63.9330 How do I demonstrate initial compliance with the emission limitation?**

(a) You must demonstrate initial compliance with the emission limitation that applies to you according to Table 4 to this subpart.

\* \* \* \* \*

■ 7. Section 63.9340 is amended by revising paragraph (c) to read as follows:

**§ 63.9340 How do I demonstrate continuous compliance with the emission limitations?**

\* \* \* \* \*

(c) *Startups, shutdowns, and malfunctions.* (1) For affected sources until [DATE 180 DAYS AFTER THE DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**], consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of

SSM of control devices and associated monitoring equipment are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with § 63.6(e)(1).

(2) The Administrator will determine whether deviations that occur during a period you identify as an SSM of control devices and associated monitoring equipment are violations, according to the provisions in § 63.6(e).

- 8. Section 63.9350 is amended by:
- a. Revising paragraph (a)(6) and;
- b. Adding paragraph (a)(7);
- c. Revising paragraph (c) introductory text;
- d. Adding paragraphs (c)(5);
- e. Revising paragraph (d) introductory text;
- f. Adding paragraph (d)(11);
- g. Revising paragraph (e);
- h. Adding paragraphs (f) through (i).

The revisions and additions read as follows:

**§ 63.9350 What reports must I submit and when?**

(a) \* \* \*

(6) For affected sources until [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**], if you had an SSM of a control device or associated monitoring equipment during the reporting period and you took actions consistent with your SSMP, the compliance report must include the information in paragraphs § 63.10(d)(5)(i).

(7) Beginning on [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**], submit all semiannual compliance reports following the procedure specified in paragraph (g) of this section.

\* \* \* \* \*

(c) For each deviation from an emission limit, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (c)(1) through (4) of this section, except that after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**] the semiannual compliance report must also include the information included in paragraph (c)(5) of this section.

\* \* \* \* \*

(5) An estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

\* \* \* \* \*

(d) For each CEMS or CPMS deviation, the semiannual compliance

report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (d)(1) through (10) of this section, except that after [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**] the semiannual compliance report must also include the information included in paragraph (d)(11) of this section.

\* \* \* \* \*

(11) The total operating time of each new or reconstructed engine test cell/stand during the reporting period.

\* \* \* \* \*

(e) Until [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], if you had an SSM of a control device or associated monitoring equipment during the semiannual reporting period that was not consistent with your SSMP, you must submit an immediate SSM report according to the requirements in § 63.10(d)(5)(ii).

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

(1) Data collected or performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT website (<https://www.epa.gov/electronic-reporting-air-emissions/electronic-reporting-tool-ert>) at the time of the test. Submit the results of the performance test or performance evaluation to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI), which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). The data must be submitted in a file format generated through the use of the EPA's ERT. Alternatively, you may submit an electronic file consistent with the extensible markup language (XML) schema listed on the EPA's ERT website.

(2) Data collected or performance evaluations of CMS measuring relative accuracy test audit (RATA) pollutants 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. The results of the performance test or performance evaluation must be included as an attachment in the ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT website. Submit the ERT

generated package or alternative file to the EPA via CEDRI.

(3) *Confidential business information (CBI)*. If you claim some of the information submitted under paragraph (f) of this section is CBI, you must submit a complete file, including information claimed to be CBI, to the EPA. The file must be 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. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described in paragraph (f)(1) of this section.

(g) If you are required to submit reports following the procedure specified in this paragraph, you must submit reports to the EPA via CEDRI, which can be accessed through the EPA's Central Data Exchange (CDX) (<https://cdx.epa.gov/>). You must use the appropriate electronic report template on the CEDRI website (<https://www.epa.gov/electronic-reporting-air-emissions/compliance-and-emissions-data-reporting-interface-cedri>) for this subpart. The report must be submitted by the deadline specified in this subpart, regardless of the method in which the report is submitted. If you claim some of the information required to be submitted via CEDRI is confidential business information (CBI), submit a complete report, including information claimed to be CBI, to the EPA. The report must be generated using the appropriate form on the CEDRI website. Submit the file on a compact disc, flash drive, or other commonly used electronic storage medium and clearly mark the medium as CBI. Mail the electronic medium 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 file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(h) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of EPA system outage for failure to timely comply with the reporting requirement. To assert a claim of EPA system outage, you must meet the requirements outlined in paragraphs (h)(1) through (7) of this section.

(1) You must have been or will be precluded from accessing CEDRI and submitting a required report within the time prescribed due to an outage of either the EPA's CEDRI or CDX systems.

(2) The outage must have occurred within the period of time beginning five business days prior to the date that the submission is due.

(3) The outage may be planned or unplanned.

(4) 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 has caused a delay in reporting.

(5) You must provide to the Administrator a written description identifying:

(i) The date(s) and time(s) when CDX or CEDRI was accessed and the system was unavailable;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to EPA system outage;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The 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.

(6) 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.

(7) In any circumstance, the report must be submitted electronically as soon as possible after the outage is resolved.

(i) If you are required to electronically submit a report through CEDRI in the EPA's CDX, you may assert a claim of force majeure for failure to timely comply with the reporting requirement. To assert a claim of force majeure, you must meet the requirements outlined in paragraphs (i)(1) through (5) of this section.

(1) You may submit a claim if 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 five business days prior to the date the submission is due. 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).

(2) 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 has caused a delay in reporting.

(3) You must provide to the Administrator:

(i) A written description of the force majeure event;

(ii) A rationale for attributing the delay in reporting beyond the regulatory deadline to the force majeure event;

(iii) Measures taken or to be taken to minimize the delay in reporting; and

(iv) The 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.

(4) 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.

(5) In any circumstance, the reporting must occur as soon as possible after the force majeure event occurs.

■ 9. Section 63.9355 is amended by revising paragraph (a) introductory text and paragraph (a)(3) and adding paragraphs (a)(6) through (8) to read as follows:

**§ 63.9355 What records must I keep?**

(a) You must keep the records as described in paragraphs (a)(1) through (5) of this section. After [DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**], you must also keep the records as described in paragraphs (a)(6) through (8) of this section.

(3) Records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.9355.

(6) In the event that an affected unit fails to meet an applicable standard, record the number of failures. For each failure record the date, time and duration of each failure.

(7) For each failure to meet an applicable standard, record and retain a list of the affected sources or equipment, an estimate of the quantity of each regulated pollutant emitted over any emission limit, and a description of the method used to estimate the emissions.

(8) Record actions taken to minimize emissions in accordance with § 63.9305, and any corrective actions taken to return the affected unit to its normal or usual manner of operation.

\* \* \* \* \*

■ 10. Section 63.9360 is amended by adding paragraph (d) to read as follows:

**§ 63.9360 In what form and how long must I keep my records?**

\* \* \* \* \*

(d) 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.

■ 11. Section 63.9375 is amended by revising paragraph (3) under the definition for "Deviation" to read as follows:

**§ 63.9375 What definitions apply to this subpart?**

\* \* \* \* \*

*Deviation* \* \* \*

\* \* \* \* \*

(3) Until [DATE 180 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN **Federal Register**], fails to meet any emission limitation or operating limit in this subpart during malfunction, regardless of whether or not such failure is permitted by this subpart.

\* \* \* \* \*

■ 12. Table 3 to subpart PPPPP is amended by revising the entry for "1. The CO or THC outlet concentration emission limitation" to read as follows:

**Table 3 to Subpart PPPPP of Part 63— Requirements for Initial Compliance Demonstrations**

As stated in § 63.9321, you must demonstrate initial compliance with each emission limitation that applies to you according to the following table:

For each new or reconstructed affected source complying with . . .	You must . . .	Using . . .	According to the following requirements . . .
1. The CO or THC outlet concentration emission limitation.	a. Demonstrate CO or THC emissions are 20 ppmvd or less.	i. EPA Methods 3A and 10 of appendix A to 40 CFR part 60 for CO measurement or EPA Method 25A of appendix A to 40 CFR part 60 for THC measurement; or.  ii. A CEMS for CO or THC and O <sub>2</sub> at the outlet of the engine test cell/stand or emission control device.	You must demonstrate that the outlet concentration of CO or THC emissions from the test cell/stand or emission control device is 20 ppmvd or less, corrected to 15 percent O <sub>2</sub> content, using the average of the test runs in the performance test.  This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in §63.9320(b). The demonstration consists of the first 4-hour rolling average of measurements. The CO or THC concentration must be corrected to 15 percent O <sub>2</sub> content, dry basis using Equation 1 in §63.9320.
*	*	*	*

■ 13. Table 4 of subpart P P P P P is revised to read as follows:

**Table 4 to Subpart P P P P P of Part 63—  
Initial Compliance With Emission  
Limitations**

each emission limitation that applies to you according to the following table:

As stated in § 63.9330, you must demonstrate initial compliance with

For the . . .	You have demonstrated initial compliance if . . .
1. CO or THC concentration emission limitation.	The first 4-hour rolling average CO or THC concentration is 20 ppmvd or less, corrected to 15 percent O <sub>2</sub> content if CEMS are installed or the average of the test run averages during the performance test is 20 ppmvd or less, corrected to 15 percent O <sub>2</sub> content.
2. CO or THC percent reduction emission limitation.	The first 4-hour rolling average reduction in CO or THC is 96 percent or more, dry basis, corrected to 15 percent O <sub>2</sub> content.

■ 14. Table 5 of subpart P P P P P is revised to read as follows:

**Table 5 to Subpart P P P P P of Part 63—  
Continuous Compliance With Emission  
Limitations**

with each emission limitation that applies to you according to the following table:

As stated in § 63.9340, you must demonstrate continuous compliance

For the . . .	You must . . .	By . . .
1. CO or THC concentration emission limitation	a. Demonstrate CO or THC emissions are 20 ppmvd or less over each 4-hour rolling averaging period.	i. Collecting the CPMS data according to § 63.9306(a), reducing the measurements to 1-hour averages used to calculate the 3-hr block average; or ii. Collecting the CEMS data according to § 63.9307(a), reducing the measurements to 1-hour averages, correcting them to 15 percent O <sub>2</sub> content, dry basis, according to § 63.9320.
2. CO or THC percent reduction emission limitation.	a. Demonstrate a reduction in CO or THC of 96 percent or more over each 4-hour rolling averaging period.	i. Collecting the CPMS data according to § 63.9306(a), reducing the measurements to 1-hour averages; or ii. Collecting the CEMS data according to § 63.9307(b), reducing the measurements to 1-hour averages, correcting them to 15 percent O <sub>2</sub> content, dry basis, calculating the CO or THC percent reduction according to § 63.9320.

■ 15. Table 7 of subpart P P P P P is revised to read as follows:

**Table 7 to Subpart P P P P P of Part 63—  
Applicability of General Provisions to  
Subpart P P P P P**

§§ 63.1 through 63.15 that apply to you according to the following table:

As stated in 63.9365, you must comply with the General Provisions in

Citation	Subject	Applicable to subpart P P P P P	Explanation
§ 63.1(a)(1)–(12) ...	General Applicability .....	Yes.	
§ 63.1(b)(1)–(3) .....	Initial Applicability Determination .....	Yes .....	Applicability to subpart P P P P P is also specified in § 63.9285.
§ 63.1(c)(1) .....	Applicability After Standard Established .....	Yes.	
§ 63.1(c)(2) .....	Applicability of Permit Program for Area Sources .....	No .....	Area sources are not subject to subpart P P P P P.
§ 63.1(c)(5) .....	Notifications .....	Yes.	
§ 63.1(d) .....	[Reserved].		
§ 63.1(e) .....	Applicability of Permit Program Before Relevant Standard is Set.	Yes.	
§ 63.2 .....	Definitions .....	Yes .....	Additional definitions are specified in § 63.9375.
§ 63.3 .....	Units and Abbreviations .....	Yes.	
§ 63.4 .....	Prohibited Activities and Circumvention .....	Yes.	
§ 63.5(a) .....	Construction/Reconstruction .....	Yes.	
§ 63.5(b) .....	Requirements for Existing, Newly Constructed, and Reconstruction Sources.	Yes.	
§ 63.5(d) .....	Application for Approval of Construction/Reconstruction .....	Yes.	
§ 63.5(e) .....	Approval of Construction/Reconstruction .....	Yes.	
§ 63.5(f) .....	Approval of Construction/Reconstruction based on Prior State Review.	Yes.	
§ 63.6(a) .....	Compliance With Standards and Maintenance Requirements—Applicability.	Yes.	
§ 63.6(b)(1)–(7) .....	Compliance Dates for New and Reconstructed Sources .....	Yes .....	§ 63.9295 specifies the compliance dates.
§ 63.6(c)(1)–(2) .....	Compliance Dates for Existing Sources .....	No .....	Subpart P P P P P does not establish standards for existing sources.
§ 63.6(c)(5) .....	Compliance Dates for Existing Sources .....	Yes .....	§ 63.9295(b) specifies the compliance date if a new or reconstructed area source becomes a major source.
§ 63.6(e)(1)(i) .....	Operation and Maintenance .....	No .....	See § 63.9305 for general duty requirement.
§ 63.6(e)(1)(ii) .....	Operation and Maintenance .....	No.	
§ 63.6(e)(1)(iii) .....	Operation and Maintenance .....	Yes.	
§ 63.6(e)(3) .....	SSM Plan .....	No.	
§ 63.6(f)(1) .....	Compliance Except During Startup, Shutdown, and Malfunction.	No.	
§ 63.6(f)(2)–(3) .....	Methods for Determining Compliance .....	Yes.	
§ 63.6(g)(1)–(3) .....	Use of Alternative Standards .....	Yes.	
§ 63.6(h) .....	Compliance With Opacity/Visible Emission Standards .....	No .....	Subpart P P P P P does not establish opacity standards and does require continuous opacity monitoring systems (COMS).
§ 63.6(i)(1)–(16) ...	Extension of Compliance .....	No .....	Compliance extension provisions apply to existing sources which do not have emission limitations in subpart P P P P P.
§ 63.6(j) .....	Presidential Compliance Exemption .....	Yes.	
§ 63.7(a)(1)–(2) .....	Performance Test Dates .....	Yes.	
§ 63.7(a)(3) .....	Performance Test Required By the Administrator .....	Yes.	
§ 63.7(b)–(d) .....	Performance Test Requirements-Notification, Quality Assurance, Facilities Necessary for Safe Testing, Conditions During Testing.	Yes.	
§ 63.7(e)(1) .....	Conditions for Conducting Performance Tests .....	No.	
§ 63.7(e)(2)–(4) .....	Conduct of Performance Tests .....	Yes.	
§ 63.7(f) .....	Alternative Test Methods .....	Yes.	
§ 63.7(g)–(h) .....	Performance Testing Requirements—Data Analysis, Record-keeping, Reporting, Waiver of Test.	Yes.	
§ 63.8(a)(1)–(2) .....	Monitoring Requirements—Applicability .....	Yes .....	Subpart P P P P P contains specific requirement for monitoring at § 63.9325.
§ 63.8(a)(4) .....	Additional Monitoring Requirements .....	No .....	Subpart P P P P P does not have monitoring requirement for flares.
§ 63.8(b) .....	Conduct of Monitoring .....	Yes.	
§ 63.8(c)(1) .....	Continuous Monitoring System (CMS) Operation and Maintenance.	Yes.	
§ 63.8(c)(1)(i) .....	General Duty to Minimize Emissions and CMS Operation .....	No.	
§ 63.8(c)(1)(ii) .....	Operation and Maintenance of CMS .....	Yes.	
§ 63.8(c)(1)(iii) .....	Requirement to Develop SSM Plan for CMS .....	No.	
§ 63.8(c)(2)–(3) .....	Monitoring System Installation .....	Yes.	
§ 63.8(c)(4) .....	CMS .....	No .....	§ 63.9335(a) and (b) specifies the requirements
§ 63.8(c)(5) .....	COMS .....	No .....	Subpart P P P P P does not have opacity or VE standards.
§ 63.8(c)(6)–(8) .....	CMS Requirements .....	Yes .....	Except that subpart P P P P P does not require COMS.
§ 63.8(d)–(e) .....	CMS Quality Control and CMS Performance .....	Yes .....	Except for § 63.8(e)(5)(ii) which applies to COMS.
§ 63.8(f)(1)–(5) .....	Alternative Monitoring Method .....	Yes.	
§ 63.8(f)(6) .....	Alternative to Relative Accuracy Test .....	Yes.	
§ 63.8(g) .....	Data Reduction .....	No .....	§§ 63.9335 and 63.9340 specify monitoring data reduction.
§ 63.9(a)–(b) .....	Notification Requirements .....	Yes.	
§ 63.9(c) .....	Request for Compliance Extension .....	No .....	Compliance extension to not apply to new or reconstructed sources.
§ 63.9(d) .....	Notification of Special Compliance Requirements for New Sources.	Yes.	
§ 63.9(e) .....	Notification of Performance Test .....	No .....	Subpart P P P P P does not require performance testing.
§ 63.9(f) .....	Notification of Opacity/VE Test .....	No .....	Subpart P P P P P does not have opacity/VE standards.

Citation	Subject	Applicable to subpart PPPPP	Explanation	
§ 63.9(g)(1) .....	Additional Notifications When Using CMS .....	Yes.		
§ 63.9(g)(2) .....	Additional Notifications When Using CMS .....	No .....	Subpart PPPPP does not have opacity/VE standards.	
§ 63.9(g)(3) .....	Additional Notifications When Using CMS .....	Yes.		
§ 63.9(h) .....	Notification of Compliance Status .....	Yes.		
§ 63.9(i) .....	Adjustment of Submittal Deadlines .....	Yes.		
§ 63.9(j) .....	Change in Previous Information .....	Yes.		
§ 63.10(a) .....	Recordkeeping/Reporting .....	Yes.		
§ 63.10(b)(1) .....	General Recordkeeping Requirements .....	Yes.		
§ 63.10(b)(2)(i) .....	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No.		
§ 63.10(b)(2)(ii) .....	Recordkeeping of Occurrence and Duration of Malfunctions ....	No .....		See § 63.9355 for recordkeeping of (1) date, time and duration; (2) listing of affected source or equipment, and an estimate of the quantity of each regulated pollutant emitted over the standard; and (3) actions to minimize emissions and correct the failure.
§ 63.10(b)(2)(iii) .....	Recordkeeping of Maintenance on Controls and Monitoring Equipment.	Yes.		
§ 63.10(b)(2)(iv)–(v).	Actions Taken to Minimize Emissions During SSM .....	No.		
§ 63.10(b)(2)(vi)–(xi).	CMS Records .....	Yes.		
§ 63.10(b)(2)(xii) ...	Records .....	Yes.		
§ 63.10(b)(2)(xiii) ...	Records .....	Yes.		
§ 63.10(b)(2)(xiv) ...	Records .....	Yes.		
§ 63.10(b)(3) .....	Recordkeeping for Applicability Determinations .....	Yes.		
§ 63.10(c)(1)–(6), (9)–(14).	Additional Recordkeeping for CMS .....	Yes.		
§ 63.10(c)(7)–(8) ...	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No .....	Specific language is located at § 63.9355 of subpart PPPPP.	
§ 63.10(c)(15) .....	Records Regarding the SSM Plan .....	No.		
§ 63.10(d)(1) .....	General Reporting Requirements .....	Yes.		
§ 63.10(d)(2) .....	Report of Performance Test Results .....	Yes.		
§ 63.10(d)(3) .....	Reporting of Opacity or VE Observations .....	No .....	Subpart PPPPP does not have opacity/VE standards.	
§ 63.10(d)(4) .....	Progress Reports for Sources with Compliance Extensions ....	No .....		Compliance extensions do not apply to new or reconstructed sources.
§ 63.10(d)(5) .....	SSM Reports .....	No. See § 63.9350 for malfunction reporting requirements.		
§ 63.10(e)(1) and (2)(i).	Additional CMS Reports .....	Yes.		
§ 63.10(e)(2)(ii) .....	Additional CMS Reports .....	No .....	Subpart PPPPP does not require COMS.	
§ 63.10(e)(3) .....	Excess Emissions/CMS Performance Reports .....	No .....	Specific language is located in § 63.9350 of subpart PPPPP.	
§ 63.10(e)(4) .....	COMS Data Reports .....	No .....	Subpart PPPPP does not require COMS.	
§ 63.10(f) .....	Waiver for Recordkeeping/Reporting .....	Yes.		
§ 63.11 .....	Control Device Requirements/Flares .....	No .....	Subpart PPPPP does not specify use of flares for compliance.	
§ 63.12 .....	State Authority and Delegations .....	Yes.		
§ 63.13 .....	Addresses .....	Yes.		
§ 63.14 .....	Incorporation by Reference .....	Yes .....	ASTM D 6522–00 and ANSI/ASME PTC 19.10–1981 (incorporated by reference-See § 63.14).	
§ 63.15 .....	Availability of Information/Confidentiality .....	Yes.		

[FR Doc. 2019–09119 Filed 5–7–19; 8:45 am]

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