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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0236; Special Conditions No. 25–745–SC]

Special Conditions: Boeing Model 787 Series Airplanes; Seats With Inertia Locking Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 787 series airplane. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is seats with inertia locking devices. 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 June 10, 2019.

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

SUPPLEMENTARY INFORMATION:

Background

On February 14, 2019, Boeing applied for a change to Type Certificate No. T00021SE for seats with inertia locking devices in Model 787 series airplanes. The Model 787 series airplane is a twin-engine transport-category airplane with a maximum takeoff weight of 560,000 pounds and seating for 440 passengers.

Type Certification Basis

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

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

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

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

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

Novel or Unusual Design Features

Boeing Model 787 series airplanes will incorporate the following novel or unusual design features:

Seats with inertia locking devices (ILD).

Discussion

Boeing will install, in Model 787 series airplanes, Thompson Aero Seating Ltd. passenger seats that can be translated in the fore and aft direction by an electrically powered motor (actuator) that is attached to the seat primary structure. Under typical service-loading conditions, the motor internal brake is able to translate the seat and hold the seat in the translated position. However, under the inertial loads of emergency-landing loading conditions specified in 14 CFR 25.562, the motor internal brake may not be able to maintain the seat in the required position. The ILD is an ''active'' device intended to control seat movement (*i.e.,* a system that mechanically deploys during an impact event) to lock the gears of the motor assembly in place. The ILD mechanism is activated by the higher inertial load factors that could occur during an emergency landing event. Each seat place incorporates two ILDs; one on either side of the seat pan. Only one ILD is required to hold an occupied seat in position during worst-case dynamic loading specified in § 25.562.

The ILD will self-activate only in the event of a predetermined airplane loading condition such as that occurring during crash or emergency landing, and will prevent excessive seat forward translation. A minimum level of protection must be provided if the seat-locking device does not deploy.

The normal means of satisfying the structural and occupant protection requirements of § 25.562 result in a non-quantified, but predictable, progressive structural deformation or reduction of injury severity for impact conditions less than the maximum specified by the rule. A seat using ILD technology, however, may involve a step change in protection for impacts below and above that at which the ILD activates and deploys to retain the seat pan in place. This could result in structural deformation or occupant injury output being higher at an intermediate impact condition than that resulting from the maximum impact condition. It is acceptable for such step-change characteristics to exist, provided the resulting output does not exceed the maximum allowable criteria at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by the requirements.

The ideal triangular maximum severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe

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

Conditions 1 through 5 address ensuring that the ILD activates when intended in order to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 6 through 10 address maintenance and reliability of the ILD, including any outside influences on the mechanism, to ensure it functions as intended.

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. 25–19–03–SC, for the Boeing Model 787 series airplane, which was published in the **Federal Register** on April 29, 2019 (84 FR 17977). The FAA received responses from two commenters.

One commenter writes:

Seats are dynamically tested in upright positions to show compliance with 14 CFR part 25.562. In this specific installation, there is a mechanical or electrical actuation of the movement of the seat, and the following points of concern may raise:

(1) If the motor loses electrical power before a crash during an actuation, can it lock the seat in a position other than that considered for [taxi, takeoff, and landing] TTL?

(2) There should be included a Special Condition to address possible interference of lightning and high-intensity radiated fields on the motor or its commands;

(3) Design features should be demanded to avoid the seat to be locked in an intermediate position (for example, because of fail in link between the seat structure and the actuator).

The FAA clarifies, regarding the commenter's concerns about seat-actuator motor disability and impact on the seat position due to loss of power or other conditions, the seat design includes a manual-override feature to restore the seat in the required position. However, while the actuator motor is part of the seat-actuation system, this feature is not the subject of the proposed special conditions. Rather, the special conditions address the ILDs, which are a different component of the seat-actuation system and are intended to ensure that the seat position is maintained in the event that the structural capability of the actuator motor brake is exceeded during emergency-landing conditions. The ILDs are a mechanical interlock feature and are not affected by loss of power or external electrical forces.

Another commenter asks if such extra safety precautions as ILDs may potentially be implemented in other airplane models, adding that seats with inertia locking devices likely enhance air-travel safety.

The FAA agrees that ILDs enhance airplane safety. It is possible that ILDs potentially will be incorporated into seat designs intended for installation on other airplane models. Incorporation of such a feature is contingent on the airplane manufacturer's determination to install seats that include ILDs as part of a seat-actuation system.

The comments do not change the special conditions, and the special conditions are adopted as proposed.

Applicability

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

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 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 Boeing Model 787 series airplanes.

In addition to the requirements of § 25.562, passenger seats incorporating an inertia locking device (ILD) must meet the following:

1. Level of Protection Provided by ILD—It must be demonstrated by test that the seats and attachments, when subject to the emergency-landing dynamic conditions specified in § 25.562, and with one ILD not deployed, do not experience structural failure that could result in:

a. Separation of the seat from the airplane floor.

b. Separation of any part of the seat that could form a hazard to the seat occupant or any other airplane occupant.

c. Failure of the occupant restraint or any other condition that could result in the occupant separating from the seat.

2. Protection Provided Below and Above the ILD Actuation Condition—If step-change effects on occupant protection exist for impacts below and above that at which the ILD deploys, tests must be performed to demonstrate that the occupant is shown to be protected at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by § 25.562. Test conditions must take into account any necessary tolerances for deployment.

3. Protection Over a Range of Crash Pulse Vectors—The ILD must be shown to function as intended for all test vectors specified in § 25.562.

4. Protection During Secondary Impacts—The ILD activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering a secondary impact that is above the severity at which the device is intended to deploy up to the impact loading required by § 25.562.

5. Protection of Occupants other than 50th Percentile—Protection of occupants for a range of stature from a two-year-old child to a ninety-five percentile male must be shown.

6. Inadvertent Operation—It must be shown that any inadvertent operation of the ILD does not affect the performance of the device during a subsequent emergency landing.

7. Installation Protection—It must be shown that the ILD installation is protected from contamination and interference from foreign objects.

8. Reliability—The performance of the ILD must not be altered by the effects of wear, manufacturing tolerances, aging or drying of lubricants, and corrosion.

9. Maintenance and Functional Checks—The design, installation, and operation of the ILD must be such that it is possible to functionally check the

device in place. Additionally, a functional check method and a maintenance check interval must be included in the seat installer's instructions for continued airworthiness (ICA) document.

10. Release Function—If a means exists to release an inadvertently activated ILD, the release means must not introduce additional hidden failures that would prevent the ILD from functioning properly.

Issued in Des Moines, Washington, on June 5, 2019.

Paul Siegmund,

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

[FR Doc. 2019–12121 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0424; Special Conditions No. 25–748–SC]

Special Conditions: Mitsubishi Aircraft Corporation, Model MRJ–200 Airplane; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Mitsubishi Aircraft Corporation (MITAC), Model MRJ–200 airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are electrical and electronic systems that perform critical functions, the loss of which could be catastrophic to the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design features. 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: This action is effective on MITAC on June 10, 2019. Send comments on or before July 25, 2019.

ADDRESSES: Send comments identified by Docket No. FAA–2019–0424 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: Dean Thompson, Airplane and 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 206–231–3165; email *Dean.R.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

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 March 3, 2015, MITAC applied for a type certificate for their new Model MRJ–200 airplanes. The MITAC Model MRJ–200 airplane is a low-wing, conventional-tail design with two wing-mounted turbofan engines. The airplane has seating for 92 passengers and a maximum takeoff weight of 95,000 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.17, MITAC must show that the Model MRJ–200 airplanes meet the applicable provisions of part 25, as amended by amendments 25–1 through 25–141; and part 26 continued airworthiness certification requirements, as amended by Amendments 26–1 through 26–6.

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 MITAC MRJ–200 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the MITAC MRJ–200 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The MITAC Model MRJ–200 airplanes will incorporate the following novel or unusual design features:

Electrical and electronic systems that perform critical functions, the loss of which may result in the loss of flight controls and other critical systems and may be catastrophic to the airplane.

Discussion

The MITAC Model MRJ–200 airplane has a fly-by-wire flight control system that requires a continuous source of electrical power to maintain an operable flight-control system. Section 25.1351(d), Operation without normal electrical power, requires safe operation in visual flight rule (VFR) conditions for at least 5 minutes after loss of normal electrical power, excluding the battery. This rule was structured around a traditional design using mechanical control cables and linkages for flight control. These manual controls allow the crew to maintain aerodynamic control of the airplane for an indefinite time after loss of all electrical power. Under these conditions, a mechanical flight control system provided the crew with the ability to fly the airplane while attempting to identify the cause of the electrical failure, restart engine(s) if necessary, and attempt to re-establish some of the electrical power generation capability.

A critical assumption in § 25.1351(d) is that the airplane is in VFR conditions at the time of an electrical failure. This is not a valid assumption in today's airline operating environment, where airplanes fly much of the time in instrument meteorological conditions on air traffic control defined flight paths. Another assumption in the existing rule is that the loss of all normal electrical power is the result of the loss of all engines. The 5-minute period in the rule is to allow at least one engine to be restarted following an all-engine power loss in order to continue the flight to a safe landing. However, service experience on airplanes with similar electrical power system architecture as the MITAC Model MRJ–200 airplanes have shown that at least the temporary loss of all electrical power for causes other than all-engine failure is not extremely improbable.

To maintain the same level of safety envisioned by the existing rule with traditional mechanical flight controls, the MITAC Model MRJ–200 airplane design must not be time-limited in its operation under all reasonably foreseeable conditions, including loss of all normal sources of engine or auxiliary power unit (APU)-generated electrical power. Unless MITAC can show that the non-restorable loss of the engine and APU power sources is extremely improbable, MITAC must demonstrate that the airplane can maintain safe flight and landing (including steering and braking on the ground for airplanes using steer/brake-by-wire or fly-by-wire speed brake panels) with the use of its emergency/alternate electrical-power systems. These electrical-power systems, or the minimum restorable electrical-power sources, must be able to power loads that are essential for continued safe flight and landing, including those required for the maximum length of approved flight diversion.

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.

Applicability

As discussed above, these special conditions are applicable to the MITAC Model MRJ–200 airplanes. Should MITAC 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 certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 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 MITAC Model MRJ–200 airplanes.

In lieu of 14 CFR 25.1351(d), the following special conditions apply:

1. The applicant must show by test or a combination of test and analysis that the airplane is capable of continued safe flight and landing with all normal electrical power sources inoperative, as prescribed by paragraphs 1.a. and 1.b., below. For purposes of these special conditions, normal sources of electrical power generation do not include any alternate power sources such as the battery, ram air turbine, or independent power systems such as the flight control permanent magnet generating system. In showing capability for continued safe flight and landing, the applicant must account for systems capability, effects on crew workload and operating conditions, and the physiological needs of the flightcrew and passengers for the longest diversion time for which the applicant is seeking approval.

a. In showing compliance with this requirement, the applicant must account for common-cause failures, cascading failures, and zonal physical threats.

b. The applicant may consider the ability to restore operation of portions of the electrical power generation and distribution system if it can be shown that unrecoverable loss of those portions of the system is extremely improbable. The design must provide an alternative source of electrical power for the time required to restore the minimum electrical power generation capability required for safe flight and landing. The applicant may exclude unrecoverable loss of all engines when showing compliance with this requirement.

2. Regardless of any electrical generation and distribution system recovery capability shown under paragraph 1 of these special conditions, sufficient electrical system capability must be provided to:

a. Allow time to descend, with all engines inoperative, at the speed that provides the best glide distance, from the maximum operating altitude to the top of the engine restart envelope, and

b. Subsequently allow multiple start attempts of the engines and auxiliary power unit (APU). The design must provide this capability in addition to the electrical capability required by existing part 25 requirements related to operation with all engines inoperative.

3. The airplane emergency electrical power system must be designed to supply:

a. Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal electrical power, for a duration sufficient to allow reconfiguration to provide a non-time-limited source of electrical power.

b. Electrical power required for continued safe flight and landing for the maximum diversion time.

4. If the applicant uses APU-generated electrical power to satisfy the requirements of these special conditions, and if reaching a suitable runway for landing is beyond the capacity of the battery systems, then the APU must be able to be started under any foreseeable flight condition prior to the depletion of the battery or the restoration of normal electrical power, whichever occurs first. Flight test must

demonstrate this capability at the most critical condition.

a. The applicant must show that the APU will provide adequate electrical power for continued safe flight and landing.

b. The operating limitations section of the airplane flight manual (AFM) must incorporate non-normal procedures that direct the pilot to take appropriate actions to activate the APU after loss of normal engine-driven generated electrical power.

5. As part of showing compliance with these special conditions, the tests to demonstrate loss of all normal electrical power must also take into account the following:

a. The assumption that the failure condition occurs during night instrument meteorological conditions (IMC) at the most critical phase of the flight, relative to the worst possible electrical power distribution and equipment-loads-demand condition.

b. After the un-restorable loss of normal engine generator power, the airplane engine restart capability is provided and operations continued in IMC.

c. The airplane is demonstrated to be capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. The applicant must account for airspeed reductions resulting from the associated failure or failures.

d. The airplane must provide adequate indication of loss of normal electrical power to direct the pilot to the non-normal procedures, and the operating limitations section of the AFM must incorporate non-normal procedures that will direct the pilot to take appropriate actions.

Issued in Des Moines, Washington, on June 4, 2019.

Paul Siegmund,

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

[FR Doc. 2019–12120 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0409; Product Identifier 2019–NM–092–AD; Amendment 39–19649; AD 2019–11–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting an airworthiness directive (AD) for certain The Boeing Company Model 737–700C, –800, and –900ER series airplanes. This AD requires a maintenance records check to determine if any main slat track assembly has been removed, an inspection of the main slat track assemblies for a suspect lot number or a lot number that cannot be determined, and applicable on-condition actions. This AD was prompted by a report that certain main slat track assemblies were manufactured incorrectly and are affected by hydrogen embrittlement. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 10, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 10, 2019.

The FAA must receive comments on this AD by July 25, 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 service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0409.

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–2019–0409; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report from Boeing indicating that 148 main slat track assemblies from a set of lot numbers were manufactured incorrectly and are affected by hydrogen embrittlement. Main slat track assemblies that are affected by hydrogen embrittlement have reduced strength. After reviewing information within the report provided from Boeing, the FAA determined on May 22, 2019, that this condition, if not addressed, could result in failure of main slat track assemblies, which could cause the slat to depart and potentially strike the airplane, resulting in injury to airplane occupants and/or preventing continued safe flight and landing.

Other Relevant Potential Rulemaking

The FAA has determined that the identified unsafe condition also exists on Boeing Model 737–8 and –9 (737 MAX) airplanes. Boeing is currently developing service information that will address the unsafe condition for these airplanes. Once this service information is developed, approved, and available, the FAA might consider additional rulemaking.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–27A1312

RB, dated June 4, 2019. This service information describes procedures for a maintenance records check to determine if any main slat track assembly has been removed, an inspection of the main slat track assemblies for a suspect lot number or a lot number that cannot be determined, sending the inspection results to Boeing, and applicable on-condition actions. On-condition actions include replacing main slat track assemblies having a suspect lot number, or having a lot number that cannot be determined, with serviceable main slat track assemblies; shipping main slat track assemblies with suspect lot numbers or with lot numbers that cannot be determined to Boeing; and contacting Boeing to report if any main slat track assembly has been removed. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

This AD requires accomplishment of the actions identified in Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this AD.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0409.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because main slat track assemblies that are affected by hydrogen embrittlement have reduced strength. This condition, if not addressed, could result in failure of main slat track assemblies, which could cause the slat to depart and potentially strike the airplane, resulting in injury to airplane occupants and/or preventing continued safe flight and landing. The compliance time for the required action that has been determined to adequately address the unsafe condition is shorter than the time necessary for the public to comment and for publication of the final rule. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

The requirements of the RFA do not apply when an agency finds good cause pursuant to 5 U.S.C. 553 to adopt a rule without prior notice and comment. Because the FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0409 and Product Identifier 2019–NM–092–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

The FAA estimates that this AD affects 32 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance records check	1 work-hour × $85 per hour = $85	$0	$85	$2,720
Inspection	3 work-hours × $85 per hour = $255	0	255	8,160
Reporting	1 work-hour × $85 per hour = $85	0	85	2,720

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement and shipping	Up to 54 work-hours × $85 per hour = Up to $4,590	Up to $82,680	Up to $87,270.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all available known costs in our cost estimate.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–11–03 The Boeing Company: Amendment 39–19649; Docket No. FAA–2019–0409; Product Identifier 2019–NM–092–AD.

(a) Effective Date

This AD is effective June 10, 2019.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–700C, –800, and –900ER series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019.

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

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that certain main slat track assemblies were manufactured incorrectly and are affected by hydrogen embrittlement. The FAA is issuing this AD to address main slat track assemblies that have reduced strength due to hydrogen embrittlement. This condition, if not addressed, could result in failure of main slat track assemblies, which could cause the slat to depart and potentially strike the airplane, resulting in injury to airplane occupants and/or preventing continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–27A1312, dated June 4, 2019, which is referred to in Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, uses the phrase ''the original issue date of Requirements Bulletin 737–27A1312 RB,'' this AD requires using ''the effective date of this AD.''

(2) Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, specifies to report inspection results to Boeing within a certain compliance time. For this AD, the compliance time to report inspection results is at the applicable time specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 3 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 3 days after the effective date of this AD.

(3) Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, specifies to ship affected parts to Boeing within a certain compliance time if, during the inspection, it has been determined that any main slat track assembly has a suspect lot number or has a lot number that cannot be determined. For this AD, the compliance time for shipping affected parts to Boeing is at the applicable time specified in paragraph (h)(3)(i) or (h)(3)(ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Ship the affected part to Boeing within 30 days after removing the affected part.

(ii) If the inspection was done before the effective date of this AD: Ship the affected

part to Boeing within 30 days after the effective date of this AD.

(4) Where ''CONDITION 5'' of Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, uses the phrase ''suspect lot number cannot be determined,'' or ''suspect lot number that cannot be determined,'' this AD requires using, ''lot number cannot be determined,'' or ''lot number that cannot be determined;'' respectively.

(5) Where flag note (a) of Figure 5, Figure 6, Figure 7, and Figure 8, of Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019, specifies ''Only required if the main slat track assembly has a suspect lot number,'' this AD requires using, ''Only required if the main slat track assembly has a suspect lot number or a lot number that cannot be determined.''

(i) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Alternative Methods of Compliance (AMOCs)

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

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

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

(k) Related Information

For more information about this AD, contact Greg Rutar, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3529; email: *Greg.Rutar@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737–27A1312 RB, dated June 4, 2019.

(ii) [Reserved]

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

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

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

Issued in Des Moines, Washington, on June 5, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–12221 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2018–1073; Airspace Docket No. 18–AEA–17]

RIN 2120–AA66

Amendment of VOR Federal Airways V–8, V–92, V–214, and V–438 in the Vicinity of Grantsville, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies VHF Omnidirectional Range (VOR) Federal airways V–8, V–92, V–214, and V–438 due to the planned decommissioning of the Grantsville, MD, VOR/DME navigation aid which provides navigation guidance for segments of the routes. The Grantsville VOR/DME is being decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, August 15, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking for Docket No.

FAA–2018–1073 in the **Federal Register** (84 FR 3730; February 13, 2019), amending VOR Federal airways V–8, V–92, V–214, and V–438 due to planned decommissioning of the Grantsville, MD, VOR/DME navigation aid. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11C dated August 13, 2018, and effective September 15, 2018, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the descriptions of VOR Federal airways V–8, V–92, V–214, and V–438, due to the planned decommissioning of the Grantsville, MD, VOR/DME. The VOR Federal airway changes are outlined below.

V–8: V–8 currently consists of two sections with a gap in between. The first section extends between the intersection of radials from the Seal Beach, CA, VORTAC, and the Ventura, CA, VOR/DME (*i.e.,* the charted DOYLE, CA, fix), and the Flag City, OH, VORTAC. The second section extends between the Briggs, OH, VOR/DME, and the Washington, DC, VOR/DME. The FAA is removing the airway segments that extend between the Briggs, OH, VOR/DME, and the Martinsburg, WV, VORTAC. As amended, that portion of V–8 between the DOYLE, CA, fix, and the Flag City, OH, VORTAC remains unchanged. The second section of the airway extends between the Martinsburg, WV, VORTAC and the Washington, DC, VOR/DME.

V–92: V–92 currently consists of two sections. The first section extends between the Chicago Heights, IL, VORTAC and the Goshen, IN, VORTAC. The second section extends between the Newcomerstown, OH, VOR/DME and the Armel, VA, VOR/DME. This action removes the airway segments between the Bellaire, OH, VOR/DME and the Armel, VA, VOR/DME. As amended, V–92 extends between Chicago Heights, IL, and Goshen, IN; and between Newcomerstown, OH and Bellaire, OH.

V–214: V–214 currently extends, in two sections, between the Kokomo, IN, VORTAC and the Muncie, IN, VOR/DME; and between the intersection of radials from the Appleton, OH, VORTAC and the Zanesville, OH, VOR/DME (*i.e.,* the charted GLOOM, OH, fix) and the Teterboro, NJ, VOR/DME. This action removes the segments between the Bellaire, OH, VOR/DME and the Martinsburg, WV, VORTAC. As amended, V–214 consists of three separate sections:

The first section extends between Kokomo, IN and Goshen, IN (no change from current configuration). The second section extends between the intersection of radials from the Appleton, OH, VORTAC and the Zanesville, OH, VOR/DME, and the Bellaire, OH, VOR/DME. The third section extends between the Martinsburg, WV, VORTAC and the Teterboro, NJ, VOR/DME.

V–438: V–438 currently extends between the Grantsville, MD, VOR/DME and the intersection of radials from the Hagerstown, MD, VOR, and the Martinsburg, WV, VORTAC (*i.e.,* the charted LUCKE, VA, fix). This action removes the airway segment between the Grantsville, MD, VOR/DME and the Hagerstown, MD, VOR. The amended V–438 extends between the Hagerstown, MD, VOR, and the LUCKE, VA, fix.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action of modifying VOR Federal airways V–8, V–92, V–214, and V–438 due to the planned decommissioning of the Grantsville, MD VOR/DME, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–8 [Amended]

From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA;

Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Rifle, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, NE; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; to Flag City, OH. From Martinsburg, WV; to Washington, DC. The portion outside the United States has no upper limit.

V–92 [Amended]

From Chicago Heights, IL; to Goshen, IN. From Newcomerstown, OH; to Bellaire, OH.

V–214 [Amended]

From Kokomo IN, Marion, IN; to Muncie, IN. From INT Appleton, OH, 236° and Zanesville, OH, 274° radials; Zanesville; to Bellaire, OH. From Martinsburg, WV; INT Martinsburg 094° and Baltimore, MD, 300° radials; Baltimore; INT Baltimore 093° and Dupont, DE, 223° radials; Dupont; Yardley, PA; to Teterboro, NJ.

V–438 [Amended]

From Hagerstown, MD, to the INT of Hagerstown 157° and the Martinsburg, WV, 130° radials.

* * * * *

Issued in Washington, DC, on June 3, 2019.

Gemechu Gelgelu,

Acting Manager, Airspace Policy Group.

[FR Doc. 2019–12036 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31254; Amdt. No. 3854]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 10, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C.

553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on May 17, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
20–Jun–19	SD	Martin	Martin Muni	9/2619	4/18/19	This NOTAM, published in TL 19–13, is hereby rescinded in its entirety.
20–Jun–19	OK	Seminole	Seminole Muni	9/9813	4/3/19	This NOTAM, published in TL 19–13, is hereby rescinded in its entirety.
20–Jun–19	CO	Grand Junction	Grand Junction Regional.	9/1155	5/7/19	LDA/DME RWY 29, Orig-D.
20–Jun–19	AK	Kodiak	Kodiak	9/2197	5/7/19	RNAV (GPS) RWY 26, Amdt 3.
20–Jun–19	CA	Sacramento	Sacramento Executive	9/2574	5/7/19	VOR RWY 2, Amdt 10D.
20–Jun–19	CA	Sacramento	Sacramento Executive	9/2575	5/7/19	ILS OR LOC RWY 2, Amdt 24D.
20–Jun–19	CA	Sacramento	Sacramento Executive	9/2577	5/7/19	RNAV (GPS) RWY 2, Orig-D.
20–Jun–19	LA	New Orleans	Louis Armstrong New Orleans Intl.	9/2864	5/7/19	ILS OR LOC RWY 11, ILS RWY 11 (SA CAT I), ILS RWY 11 (CAT II), ILS RWY 11 (CAT III), Amdt 5.
20–Jun–19	TX	Mc Allen	Mc Allen Miller Intl	9/3848	5/9/19	ILS OR LOC RWY 14, Amdt 9.
20–Jun–19	OK	Seminole	Seminole Muni	9/4052	5/10/19	NDB RWY 16, Amdt 4.

[FR Doc. 2019–12037 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31253; Amdt. No. 3853]

Standard Instrument Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 10, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 10, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC, 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally,

individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on May 17, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 20 June 2019

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 26, Amdt 4
Homer, AK, Homer, LOC RWY 4, Amdt 11C
Homer, AK, Homer, LOC BC RWY 22, Amdt 6B
Homer, AK, Homer, RNAV (GPS) Y RWY 4, Amdt 1D
Homer, AK, Homer, RNAV (GPS) Y RWY 22, Amdt 1C
Homer, AK, Homer, RNAV (GPS) Z RWY 4, Amdt 1C
Homer, AK, Homer, RNAV (GPS) Z RWY 22, Amdt 1D
Russian Mission, AK, Russian Mission, RNAV (GPS) RWY 18, Amdt 1
Russian Mission, AK, Russian Mission, RNAV (GPS) RWY 36, Amdt 1
Russian Mission, AK, Russian Mission, Takeoff Minimums and Obstacle DP, Amdt 2A
Soldotna, AK, Soldotna, NDB RWY 7, Amdt 2F
Soldotna, AK, Soldotna, NDB RWY 25, Amdt 3E
Soldotna, AK, Soldotna, RNAV (GPS) RWY 7, Amdt 1
Soldotna, AK, Soldotna, RNAV (GPS) RWY 25, Amdt 2
Soldotna, AK, Soldotna, Takeoff Minimums and Obstacle DP, Amdt 2A
Wainwright, AK, Wainwright, RNAV (GPS) RWY 6, Amdt 2
Wainwright, AK, Wainwright, RNAV (GPS) RWY 24, Amdt 2
Wainwright, AK, Wainwright, Takeoff Minimums and Obstacle DP, Amdt 1
Huntsville, AL, Huntsville Intl-Carl T Jones Field, ILS OR LOC RWY 18L, Amdt 5

Huntsville, AL, Huntsville Intl-Carl T Jones Field, ILS OR LOC RWY 36L, Amdt 11
Huntsville, AL, Huntsville Intl-Carl T Jones Field, ILS OR LOC RWY 36R, Amdt 3
Huntsville, AL, Huntsville Intl-Carl T Jones Field, RNAV (GPS) RWY 18L, Amdt 2
Huntsville, AL, Huntsville Intl-Carl T Jones Field, RNAV (GPS) RWY 18R, Amdt 2
Huntsville, AL, Huntsville Intl-Carl T Jones Field, RNAV (GPS) RWY 36L, Amdt 2
Huntsville, AL, Huntsville Intl-Carl T Jones Field, RNAV (GPS) RWY 36R, Amdt 2
Huntsville, AL, Huntsville Intl-Carl T Jones Field, VOR–A, Amdt 12B, CANCELLED
Sacramento, CA, Sacramento Executive, Takeoff Minimums and Obstacle DP, Orig-A
Kahului, HI, Kahului, RNAV (GPS) RWY 20, Amdt 2
Kahului, HI, Kahului, RNAV (GPS) Y RWY 2, Amdt 2
Kahului, HI, Kahului, RNAV (RNP) Z RWY 2, Amdt 1
Kalaupapa, HI, Kalaupapa, RNAV (GPS)-A, Amdt 1
Kalaupapa, HI, Kalaupapa, RNAV (GPS)-B, Orig
Lihue, HI, Lihue, ILS OR LOC RWY 35, Amdt 6B
Lafayette, LA, Lafayette Rgnl/Paul Fournet Field, RADAR 1, Amdt 11
Lafayette, LA, Lafayette Rgnl/Paul Fournet Field, RNAV (GPS) RWY 4R, Amdt 2
Lafayette, LA, Lafayette Rgnl/Paul Fournet Field, RNAV (GPS) RWY 29, Amdt 1
Presque Isle, ME, Presque Isle Intl, ILS OR LOC RWY 1, Amdt 7
Presque Isle, ME, Presque Isle Intl, RNAV (GPS) RWY 1, Amdt 2
Presque Isle, ME, Presque Isle Intl, RNAV (GPS) RWY 19, Amdt 1
Presque Isle, ME, Presque Isle Intl, RNAV (GPS) RWY 28, Amdt 2
Presque Isle, ME, Presque Isle Intl, Takeoff Minimums and Obstacle DP, Amdt 6
Presque Isle, ME, Presque Isle Intl, VOR RWY 19, Amdt 10C
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 24L, ILS RWY 24L SA CAT II, Amdt 24
Cleveland, OH, Cleveland-Hopkins Intl, ILS OR LOC RWY 24R, ILS RWY 24R SA CAT I, ILS RWY 24R CAT II, ILS RWY 24R CAT III, Amdt 7
Cleveland, OH, Cleveland-Hopkins Intl, RNAV (GPS) Y RWY 24L, Amdt 5
Newark, OH, Newark-Heath, Takeoff Minimums and Obstacle DP, Amdt 3
West Chester, PA, Brandywine Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Clarksville, TN, Outlaw Field, LOC RWY 35, Amdt 6A
Clarksville, TN, Outlaw Field, RNAV (GPS) RWY 17, Amdt 1A
Clarksville, TN, Outlaw Field, RNAV (GPS) RWY 35, Amdt 1A
Clarksville, TN, Outlaw Field, VOR RWY 35, Amdt 15H
Houston, TX, George Bush Intercontinental/Houston, TX, ILS OR LOC RWY 8L, ILS RWY 8L SA CAT I, ILS RWY 8L CAT II, ILS RWY 8L CAT III, Amdt 4E

Rescinded: On April 22, 2019 (84 FR 16606), the FAA published an Amendment in Docket No. 31247, Amdt No. 3847, to Part 97 of the Federal Aviation Regulations under sections 97.29. The following entry for Pierre, SD, effective June 20, 2019, is hereby rescinded in its entirety:

Pierre, SD, Pierre Rgnl, ILS OR LOC RWY 31, Amdt 12D

Rescinded: On May 3, 2019 (84 FR 18971), the FAA published an Amendment in Docket No. 31249, Amdt No. 3849, to Part 97 of the Federal Aviation Regulations under sections 97.33. The following entry for Pierre, SD, effective June 20, 2019, is hereby rescinded in its entirety:

Pierre, SD, Pierre Rgnl, RNAV (GPS) RWY 31, Orig-B

[FR Doc. 2019–12043 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 705

[Docket No. 180227217–8217–03]

RIN 0694–AH55

Implementation of New Commerce Section 232 Exclusions Portal

AGENCY: Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: This interim final rule changes the process for requesting exclusions from the duties and quantitative limitations on imports of aluminum and steel discussed in two Commerce interim final rules implementing the exclusion process authorized by the President as part of the action he took to adjust imports under Section 232 of the Trade Expansion Act of 1962, as amended (''232''). The Department of Commerce (''the Department'') has developed the portal referred to henceforth as the ''232 Exclusions Portal'' for persons submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals to replace the use of the Federal rulemaking portal (*http://www.regulations.gov*) and streamline the exclusions process while enhancing data integrity and quality controls. Based on public comment on the current process for submissions to the Department, Commerce is publishing this interim final rule to grant the public the ability to submit new exclusion requests as soon as possible through the 232 Exclusions Portal while still allowing the opportunity for public comment on the portal.

DATES: *Effective date:* This interim final rule is effective June 13, 2019.

Comments: Comments on this interim final rule must be received by BIS no later than August 9, 2019.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for information on submitting exclusion requests, objections thereto, rebuttals, and surrebuttals.

All comments on this interim final rule must be submitted by one of the following methods:

- *By the Federal eRulemaking Portal: http://www.regulations.gov.* Comments on this interim final rule may be submitted to *regulations.gov* docket number BIS–2019–0005.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AH55 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Reference RIN 0694–AH55.

FOR FURTHER INFORMATION CONTACT: Brad Botwin, Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce (202) 482–5642, *Steel232@bis.doc.gov* regarding provisions in this rule specific to steel exclusion requests and (202) 482–4757, *Aluminum232@bis.doc.gov* regarding provisions in this rule specific to aluminum exclusion requests.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary to grant exclusions from the duties if the

Secretary determines the steel or aluminum article for which the exclusion is requested is not ''produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality'' or should be excluded ''based upon specific national security considerations,'' and provided authority for the Secretary to issue procedures for exclusion requests. On April 30, 2018, Proclamations 9739 and 9740, and on May 31, 2018, Proclamations 9758 and 9759, set quantitative limitations on the import of steel and aluminum from certain countries in lieu of the duties. On August 29, 2018, in Proclamations 9776 and 9777, President Trump also authorized the Secretary to grant exclusions from quantitative limitations based on the same standards applicable to exclusions from the tariffs. On March 19, 2018, the Department first issued an interim final rule, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106) (the ''March 19 rule'') laying out procedures for the 232 exclusions process.

On September 11, 2018, the Department issued a second interim final rule, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026), (the ''September 11 rule'') that revised the two supplements added by the March 19 rule with improvements designed to ensure a transparent, fair, and efficient exclusion and objection process.

This rule generally does not address all the comments received in response to the September 11 rule. This rule is limited to making changes necessary to implement the new 232 Exclusions Portal because many commenters, in response to the March 19 and September 11 rules, had expressed concerns over the inefficiencies of the 232 exclusions process, in particular the limitations of using *regulations.gov* to actively manage the ongoing exclusions process.

The Genesis of the New 232 Exclusions Portal

At the time of the March 19 rule, the Federal rulemaking portal at *www.regulations.gov* was chosen because it was the best option the Department had available for managing the 232 exclusions process. Many comments on the March 19 rule stated that, based on the rule's documentation requirements, *regulations.gov* was not easy to navigate nor fully transparent about where requests were in process. In the September 11 rule, to help resolve these issues, in addition to adding a rebuttal and surrebuttal process, Commerce also added Annex 1 to Supplements No. 1 and 2 to part 705, which provided additional guidance on *regulations.gov* usage for the 232 exclusions process. Commerce also posted FAQs, quick tips, and guidance documents on both the Department's website and on the steel and aluminum dockets on *regulations.gov*. While commenters acknowledged the September 11 rule improved the 232 exclusions process somewhat, it also added to the complexity of using *regulations.gov* because more documents needed to be provided and the process of locating documents in *regulations.gov* became more complicated for persons making 232 submissions and for the Department in managing the 232 exclusions process.

While *regulations.gov* was readily available to quickly implement the exclusions process, the site was not easily adaptable to the 232 submissions process, particularly as it evolved into a multi-step system and required a significant amount of human data entry. The Department concluded the 232 exclusions process worked on *regulations.gov*, but determined a specifically designed web-based portal would be easier and more efficient for both outside parties and the Department.

Two bureaus within the Department of Commerce, the Bureau of Industry and Security (BIS) and the International Trade Administration (ITA), developed the Portal to streamline the exclusions process for external parties, including importers and domestic manufacturers, by replacing the data collection point with web-based forms, which will enhance data integrity and quality controls. The Portal allows 232 submitters to easily view all exclusion request, objection, rebuttal, and surrebuttal documents in one, web-based system. In order to benefit from using the new Portal, submitters must complete a web-based registration prior to submitting any documents. In addition, external parties will now be able to track submission deadlines in this same system. This also allows for better collaboration between government agencies processing 232 exclusion requests.

So, on November 26, 2018, the Department published the notice, *Procedures for Participating in User Testing of the New Commerce 232 Exclusion Process Portal* (83 FR 60393). On December 6–7, 2018, various parties tested the 232 Exclusions Portal at the Department and provided feedback on the functionality of the Portal.

Comments on this rule allows the Department to identify additional enhancements for later incorporation.

Use of the New Portal and Transition Period

This interim final rule only makes changes to the 232 exclusions process needed for the implementation of a new 232 Exclusions Portal. The Department will address any remaining comments from the September 11 rule and any comments received in response to this rule in a subsequent rulemaking. In order to begin transition, the Department will begin accepting new exclusion requests on the 232 Exclusions Portal on June 13, 2019 and will no longer accept new exclusion requests on *regulations.gov*. The last day on which an exclusion request may be initiated through *regulations.gov* is June 12, 2019. Objections, rebuttals, and surrebuttals must always be filed on the system where the exclusion request was submitted, whether in *www.regulations.gov* or in the 232 Exclusions Portal.

In addition, on June 10, 2019, the Department will publish a detailed user guide for the 232 Exclusions Portal (including screen shot images) on its website (*https://www.commerce.gov/page/section-232-investigations*), so that parties can familiarize themselves with the operation of the 232 Exclusions Portal prior to June 13, 2019, when all new exclusion requests must be submitted through the 232 Exclusions Portal.

There will be a transition period during which both the *regulations.gov* system and the new 232 Exclusions Portal will coexist. The Department will continue to use *regulations.gov* for the processing of all exclusion requests that have already been filed or that are filed no later than June 12, 2019, including related submissions that are filed in *regulations.gov* after June 12, 2019, until the underlying exclusions requests receive a final decision. However, all new Section 232 exclusion requests submitted on or after June 13, 2019, must be submitted in the new 232 Exclusions Portal. Objections, rebuttals, and surrebuttals must always be filed on the system where the exclusion request was submitted, whether in www.*regulations.gov* or in the 232 Exclusions Portal. This transition period is necessary given the significant limitations and difficulties that

transferring data from *regulations.gov* to the 232 Exclusions Portal would entail.

This interim final rule makes various edits to Supplements No. 1 and 2, and to Annex 1 to Supplements No. 1 and 2, to add provisions relating to the transition period and to add references to the 232 Exclusions Portal. Because *regulations.gov* will continue to be used for exclusion requests filed up to and including June 12, 2019, and for all submissions related to those exclusion requests (objections, rebuttals, and surrebuttals), the regulatory provisions referring to *regulations.gov* must remain until the Department has provided a final disposition on all exclusions requests filed up to and including June 12, 2019.

Changes Made in This Interim Final Rule To Adopt the 232 Exclusions Portal

This interim final rule makes the same changes to Supplements No. 1 and No. 2 for transitioning to the 232 Exclusions Portal. The changes described below will apply to both supplements and are being made to the same paragraphs in each supplement. This interim final rule updates Annex 1 to Supplements No. 1 and 2 to part 705 to make conforming changes relating to the addition of the 232 Exclusions Portal. The majority of the changes being made to the two supplements involve adding references to the 232 Exclusions Portal wherever *regulations.gov* is referenced. The changes also describe the transition period and provide guidance on what submission method is to be used based on the date the exclusion request was or is to be submitted.

The Department has tried to minimize the number of changes made to Supplements No. 1 and 2 in this interim final rule. The structure of how the transition provisions are being implemented will not require a rule to be published later to end the transition period. Thus, the end of the transition period will be self-implementing based on the criteria included in this interim final rule. However, a subsequent rule will remove provisions related to *regulations.gov* that will no longer be applicable after the transition period ends, as well as to reflect any enhancements to the 232 Exclusions Portal that may be made in the interim.

To implement the changes described above, this interim final rule makes the following revisions in both Supplements No. 1 and 2:

In paragraph (a), six sentences are added to the end of this paragraph to specify that the supplements reference two different methods of submission for 232 exclusion submissions. The new text specifies that the first method of submission is based on a legacy system used for 232 submissions (*www.regulations.gov*), and the second method of submission is based on a new portal developed by the U.S. Department of Commerce (232 Exclusions Portal), for receiving, managing and responding to 232 exclusion submissions.

The new text being added to paragraph (a) specifies that the two methods of processing for exclusions are for use during a transition period that will end once the Department has made a final disposition on all exclusion requests submitted via *regulations.gov* no later than June 12, 2019. The new text being added also specifies that new exclusion requests submitted on or after June 13, 2019, may only be submitted using the new 232 Exclusions Portal. The new text specifies that any objection, rebuttal, or surrebuttal pertaining to an exclusion request will be submitted using the same submission method as used for the respective exclusion request during this transition period. The last two sentences provide two examples for submitting 232 exclusion submissions during the transition period.

Shortly after the transition period for processing of exclusions is completed, the Department intends to publish another rule to update the two supplements to remove the transition related provisions to clarify that only the 232 Exclusions Portal is available for 232 exclusion submissions.

In the introductory text of paragraph (b), the first sentence after the heading is revised to specify that any exclusion request to be submitted no later than June 12, 2019, must be submitted through *regulations.gov* and that the other provisions regarding where to find forms remain unchanged. This same type of change is made in several of the paragraphs in the two supplements where provisions for using *regulations.gov* are referenced. The requirements specific to *regulations.gov* are not being changed at this time, except that provisions specific to the transition timelines are being added. These changes are being made so 232 exclusion request submitters will know how much longer those 232 exclusion provisions tied to the use of *regulations.gov* will continue to be used during the transition period.

Also in the introductory text of paragraph (b), three sentences are added to introduce the requirements for the required forms that will be used on the 232 Exclusions Portal for any exclusion request submitted on or after June 13, 2019. Because the 232 Exclusions Portal includes web-based fillable forms within the system, there is no need to reference filling out one of the four external forms and then uploading it into the system, as a submitter would need to do in *regulations.gov*. This is an example of one of the advantages of the 232 Exclusions Portal. The new introductory text for the 232 Exclusions Portal specifies that each web-based form is available at the bottom of the preceding filing. For example, to file an objection, a party must scroll to the bottom of the exclusion request and click on ''Create Objection Filing'' link to start the objection filing for that specific exclusion request. The new text provides application examples for how to identify and submit the forms for objections, rebuttals, and surrebuttals in the 232 Exclusions Portal. Lastly, this rule adds three sentences to describe that 232 submitters will be required to complete a web-based registration on the 232 Exclusions Portal prior to submitting any documents. The registration process will require submitters to provide an email and establish a password for an account in the 232 Exclusions Portal. Once registered in the 232 Exclusions Portal, submitters will be able to log in to their account on the 232 Exclusions Portal and submit exclusion requests, objections, rebuttals and surrebuttal documents.

In paragraphs (b)(1), (2), (3) and (4), one sentence is added to the end of each of these respective paragraphs to reference the name of the web-based form on the 232 Exclusions Portal. Each of the new sentences begins by specifying what the title of the web-based fillable form in the 232 Exclusions Portal is and then provides the name of the web-based fillable form: Exclusion Request (for paragraph (b)(1)), Objection (for paragraph (b)(2)), Rebuttal (for (b)(3)), and Surrebuttal (for paragraph (b)(4)). This rule adds a new Note to paragraphs (b)(1) through (4) to describe how each filing of one of the web-based fillable forms (232 submissions) will be automatically assigned its own distinct ID# in the 232 Exclusions Portal. The new Note also specifies that each 232 submission in addition to having its own distinct ID# will also be preceded with an acronym for the file type: Exclusion requests (ER ID#), Objection (OF ID#), Rebuttals (RB ID#) and Surrebuttals (SR ID#). The new Note provides examples of this for the four types of 232 submissions. The new Note specifies that the 232 Exclusions Portal will automatically assign the two letter designator depending on the type

of web-based form being submitted. The Note specifies that the 232 Exclusions Portal will assign an ID number to the original exclusion request and that ID number will be common to any objection, rebuttal, or surrebuttal submitted pertaining to the same exclusion request. Under *regulations.gov*, many of these are manual processes, so this is an example of how the 232 Exclusions Portal should reduce the burdens on the public, as well as the U.S. Government, by automating processes of associating documents under the same ID#.

Under paragraph (b)(5)(iii) (*Procedures for identifying, but not disclosing confidential or proprietary business information (CBI) in the public version, and procedures for submitting CBI)* paragraphs (b)(5)(iii)(A) and (B), a reference to the Commerce 232 Exclusions Portal is added right after the reference to *regulations.gov*. The email process used for submitting CBI will generally be the same for rebuttals and surrebuttals submitted in either *regulations.gov* or the 232 Exclusions Portal. Therefore, the change in paragraph (b)(5)(iii)(A) is limited to adding a reference to the 232 Exclusions Portal. A reference to the 232 Exclusions Portal is also added to paragraph (b)(5)(iii)(B). In addition, this rule also adds provisions to paragraph (b)(5)(iii)(B) related to the transition from *regulations.gov* to the 232 Exclusions Portal, including the different naming convention for 232 submissions used in the 232 Exclusions Portal that must be referenced in any email submitting CBI.

Thus, the first sentence is revised to specify that for any rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests submitted no later than June 12, 2019, the email subject line must only include the original *regulations.gov* exclusion request ID # and the body of the email must include the 11-digit alphanumeric tracking number received from *regulations.gov*. For any rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests submitted on or after June 13, 2019, the email subject line must only include the original 232 Exclusions Portal Exclusion Request (ER) ID #. In addition, this new sentence specifies that the body of the email must include the 232 Exclusions Portal Rebuttal (RB) ID #, or Surrebuttal (SR) ID # that was generated by the 232 Exclusions Portal when the rebuttal, or surrebuttal was successfully submitted. In paragraphs (b)(5)(iii)(B) and (C), the last sentence of each of these paragraphs is revised to add a reference to the 232 Exclusions Portal.

In paragraph (c)(3), the first sentence after the heading is revised to specify that all exclusion requests submitted no later than June 12, 2019 must be in electronic form and must be submitted through *regulations.gov*. A new sentence is added to paragraph (c)(3) to specify that all exclusion requests submitted on or after June 13, 2019, must be submitted directly through the 232 Exclusions Portal.

In paragraph (c)(4), the entire paragraph is revised to specify that there continues to be no time limit for submitting exclusion requests, but that the method of submission will vary based on the date, and that the correct method of submission must be used based on the date of submission. Paragraph (c)(4) is also revised to specify that the U.S. Department of Commerce will reject and require resubmission using the correct submission method for any exclusion request that does not comply with the submission requirements specified in paragraph (c)(3). The paragraph specifies that adhering to these date requirements is needed during the transition period to allow the transition period to be completed as quickly as possible and in a fair and transparent manner.

In paragraph (d)(2), this rule redesignates and slightly revises the text of the paragraph after the heading as new paragraph (d)(2)(i). Transition related text is added to specify that when submitting an objection to a submitted exclusion request that was submitted no later than June 12, 2019, the objector must locate the exclusion request and its objection form for the submitted exclusion request in *regulations.gov*. The rest of text of the paragraph for submitting objections in *regulations.gov* remains the same.

New paragraph (d)(2)(ii) is added to specify that when submitting an objection to a submitted exclusion request that was submitted on or after June 13, 2019, the objector must locate the exclusion request and submit the objection in response to the request, directly in the 232 Exclusions Portal. The new paragraph (d)(2)(ii) includes a sentence to assist objectors in how to find the web-based objection form when reviewing a posted exclusion request form.

In paragraph (d)(3), transition related provisions are added to specify that all objections to submitted exclusion requests that were submitted no later than June 12, 2019 must be in electronic form and submitted to *regulations.gov* no later than 30 days after the related exclusion request is posted. This rule adds a new sentence at the end of the paragraph to specify that all objections to submitted exclusion requests that were submitted on or after June 13, 2019, must be submitted directly on the 232 Exclusions Portal no later than 30 days after the related exclusion request is posted.

In the introductory text of paragraph (f), a reference to the 232 Exclusions Portal is added after the *regulations.gov* reference to specify that this paragraph that identifies the requirements for the rebuttal process also applies to rebuttals submitted using the 232 Exclusions Portal.

In paragraph (f)(1), this rule redesignates the existing text after the heading as new paragraph (f)(1)(i).

New paragraph (f)(1)(ii) is added to specify how an eligible rebutter can find the web-based rebuttal form by scrolling to the bottom of the objection form and how to fill out the web-based form for submitting their rebuttal to the objection form through the 232 Exclusions Portal.

In paragraph (f)(2) (*Format and size limitations for rebuttals*), a reference to the 232 Exclusions Portal is added after the reference to *regulations.gov* in the second sentence after the paragraph heading. This change is being made to specify that the same format and size limitations apply for rebuttals submitted in the 232 Exclusions Portal and *regulations.gov*. The revisions also specify that the submission method for the rebuttal will depend on what submission method was used for the submission of the exclusion request.

In paragraph (f)(4), a reference to the 232 Exclusions Portal is added after *regulations.gov* in the first sentence after the paragraph heading. This change is being made to specify that the same time limit for submitting rebuttals apply for rebuttals submitted in the 232 Exclusions Portal and *regulations.gov*. The revisions specify that the submission method for the rebuttal will depend on what submission method was used for the submission of the exclusion request. Lastly, a reference to the 232 Exclusions Portal is added after *regulations.gov* in the third sentence because the same rationale for the number of processing days needed applies to the 232 Exclusions Portal.

In paragraph (g), the first sentence after the paragraph heading is revised to add a reference to the 232 Exclusions Portal after *regulations.gov* to specify that the requirements for the surrebuttal process also applies to surrebuttals submitted using the 232 Exclusions Portal.

In paragraph (g)(1), this rule redesignates the existing text after the heading as new paragraph (g)(1)(i).

New paragraph (g)(1)(ii) is added to specify how an eligible surrebutter can find the web-based surrebuttal form by scrolling to the bottom of the rebuttal form and how to fill out the web-based form for submitting their surrebuttal to the rebuttal through the 232 Exclusions Portal.

In paragraph (g)(2), a reference to the 232 Exclusions Portal is added after the reference to *regulations.gov* in the second sentence after the paragraph heading. This change is being made to specify that the same format and size limitations apply for surrebuttals whether submitted through the 232 Exclusions Portal or through *regulations.gov*. The revisions specify that the submission method for the surrebuttal will depend on which submission method was used for the submission of the exclusion request.

In paragraph (g)(4), a reference to the 232 Exclusions Portal is added after *regulations.gov* in the first sentence after the paragraph heading.

In paragraph (h)(2)(i), this rule redesignates the existing text after the heading as paragraph (h)(2)(i)(A) to specify the requirements identified in this paragraph apply to each exclusion request submitted no later than June 12, 2019 under the two docket numbers referenced in the two respective supplements for steel and aluminum. This rule makes no other changes to this redesignated paragraph, except to add the parenthetical phrase ''(decision memos)'' in the first sentence to clarify that the posted responses in *regulations.gov* are referred to as decision memos.

New paragraph (h)(2)(i)(B) is added to specify that the requirements identified in this paragraph apply to each exclusion request submitted on or after June 13, 2019. Similar to the requirements specified in paragraph (h)(2)(i)(A), the U.S. Department of Commerce response (decision memo) to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted through the 232 Exclusions Portal.

In paragraph (h)(2)(ii), the reference to ''the U.S. Department of Commerce will work with U.S. Customs and Border Protection (CBP) to ensure that the requester provided an accurate HTSUS statistical reporting number.'' is deleted. This change is made to reflect a change in the internal business process whereby CBP is being sent the exclusion request for HTSUS validation and exclusion request administrability prior to an exclusion request being posted on *regulations.gov*. In the 232 Exclusions Portal, CBP will have access to the portal and will be able to receive the exclusion request for conducting the same type of review, but in a more efficient manner than is currently done with exclusion requests submitted in *regulations.gov*. This rule adds a reference to the 232 Exclusions Portal in the second sentence. As a conforming change, this rule revises the third sentence to remove the phrase ''If so'' at the beginning of the sentence because it is no longer needed because of the revision made to the second sentence. In the third sentence, this rule adds a reference to the 232 Exclusions Portal to specify that if BIS identifies no national security concerns, it will post a decision on the 232 Exclusions Portal granting the exclusion request following the same streamlined review process as exclusion requests submitted using *regulations.gov*.

In paragraph (h)(2)(iii)(A), a reference to the 232 Exclusions Portal is added after *regulations.gov* to specify that approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in *regulations.gov* or in the 232 Exclusions Portal and this will be based on which submission method was used for the submission of the exclusion request.

In paragraph (h)(3)(i), the second sentence after the paragraph heading is revised to add a reference to the 232 Exclusions Portal after *regulations.gov*. This change is being made to specify the estimated 106-day period begins on the day the exclusion request is posted in *regulations.gov* or in the 232 Exclusions Portal based on which submission method was used for the exclusion request.

Paragraph (i) is revised by adding text directing the public to *See* Annex 1 to Supplements Nos. 1 and 2 to part 705 for application issues that are specific to using *www.regulations.gov* for submitting rebuttals and surrebuttals under these two supplements for exclusion requests submitted no later than June 12, 2019 and describing a manual in the 232 Exclusions Portal for exclusion requests submitted on or after June 13, 2019, titled 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'') and posted online at (*https://www.commerce.gov/page/section-232-investigations*).

In Annex 1 to Supplements No. 1 and 2 to Part 705—Steps for Using *regulations.gov* to File Rebuttals and Surrebuttals, this rule adds introductory text before the part of the Annex dealing with ''How to file rebuttal comments.'' The introductory text specifies that these steps for how to file rebuttal and surrebuttal comments are only applicable during the transition period for exclusion requests submitted no later than June 12, 2019 in *regulations.gov*. Also, a second sentence is added to specify that for guidance on how to file rebuttal and surrebuttal comments to exclusion requests submitted on or after June 13, 2019, in the 232 Exclusions Portal, to see the manual titled 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'').

Types of Comments the Department is Requesting on This Rule

The Department is not seeking comments regarding the duties or quantitative limitations themselves or the exclusion and objection process overall. Rather, the Department seeks comment on whether the specific changes included in this third interim final rule have addressed earlier concerns with the use of *regulations.gov* for the 232 exclusions process, as well as comments on the 232 Exclusions Portal and the transition related provisions. Specifically, Commerce encourages comments on the 232 Exclusions Portal as to which features are an improvement, as well highlighting any areas of concern or suggestions for improvement.

The 232 Exclusions Portal should make significant improvements to the efficiency of the 232 exclusions process. The Department will continue to make improvements to the 232 Exclusions Portal, including based on comments received on this rule, and parties will be notified of any new features.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Pursuant to Proclamations 9704 and 9705 of March 8, 2018, and Proclamations 9776 and 9777 of August 29, 2018, the establishment of procedures for an exclusions process under each Proclamation shall be published in the **Federal Register** and are exempt from Executive Order 13771.

2. The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number.

This final regulation involves three collections currently approved by OMB with the following control numbers

- Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0139)
- Objections from the Section 232 National Security Adjustments of Imports of Steel and Aluminum (control number 0694–0138).
- Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 Adjustments for Steel and Aluminum (OMB control number 0694–0141).

This rule is not expected to increase the burden hours for any of the collections associated with this rule as minimal changes are anticipated.

Any comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, may be sent to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to 5 U.S.C. 553, the Department of Commerce generally seeks notice and comment before issuing a final rule. However, an agency may forgo notice and comment when issuing ''rules of agency organization, procedure, or practice.'' Section 553(b)(3)(A). ''The 'critical feature' of [such a] rule is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *Nat'l Min. Ass'n* v. *McCarthy,* 758 F.3d 243, 250 (DC Cir. 2014) (internal quotations omitted). Procedural rules ''ensure that agencies retain latitude in organizing their internal operations.'' *Am. Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1047 (DC Cir. 1987) (internal quotations omitted).

Under Section 553(b)(3)(A), the Department may issue this rule without notice and comment. This rule changes the Department's procedures but does not alter the rights or interests of parties. Before this rule, the Department managed the 232 exclusions process through the Federal rulemaking portal (*www.regulations.gov*). While *regulations.gov* allowed for submission of exclusion requests, objections, rebuttals and surrebuttals, processing those separate submissions required significant human data entry. The new, custom-designed portal will automatically compile all submissions and allow both submitters and the Department to view the documents more easily in one web-based system. The new portal also displays submission deadlines and requires submitters to complete a web-based registration to better track submissions. Under this rule, submitters retain the ability to submit exclusion requests, objections, rebuttals, and surrebuttals, but new submitters as of the effective of this interim final rule, June 13, 2019, must now use the 232 Exclusions Portal. The rule does not change the standards for granting 232 exclusions. Therefore, while this rule changes how submitters provide information to the Department, the rule does not alter the rights or interests of submitters or other parties involved in the 202 exclusion process.

In addition, the agency may waive the requirement under Section 553(d) that a final rule be published not less than 30 days prior to its effective date when an agency finds ''good cause'' and publishes the good cause finding with the rule. ''[T]he purpose of the thirty-day waiting period [pursuant to Section 553(d)] is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (DC Cir. 1996). Accordingly, ''[i]n determining whether good cause exists, an agency should balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *Id.* (internal quotations omitted).

Here, the Department finds good cause to waive the 30-day waiting period. Public comments received in response to the March 19 and September 11 rules asserted concerns with the use of the Federal rulemaking portal *regulations.gov* for the 232 exclusions process. These commenters asserted that the use of *regulations.gov* made the 232 exclusions process complex and burdensome. Waiving the 30-day waiting period allows the Department to provide the public the benefits of the streamlined 232 Exclusions Portal immediately.

The U.S. Department of Commerce has stated that the use of *regulations.gov* was intended as a temporary solution to allow for the 232 exclusions process to be established quickly and that developing an online portal specific to the 232 exclusions process as soon as possible was one of the goals for improving the efficiency of the 232 exclusions process.

On November 26, 2018, the U.S. Department of Commerce published the notice, *Procedures for Participating in User Testing of the New Commerce 232 Exclusion Process Portal* (83 FR 60393). The November 26 notice described the process for the public to submit requests to participate in the public testing phase of the new 232 Exclusions Portal, and specified that the Department planned to transition to the new 232 Exclusions Portal once testing was completed and any final updates were made. On December 6–7, 2018, various parties tested the portal at the Department. Based on the feedback from these parties, the Department's portal development team made revisions to the 232 Exclusions Portal and presented these changes to the testing parties at the Department on February 19, 2019. The 232 Exclusions Portal is better suited than *regulations.gov* for the 232 exclusions process based on the public input during the public testing phase and the portal development team's experience developing and testing the new portal.

Moreover, the Department's administrative burden decreases significantly. Finally, foregoing the delay in effective date imposes no burden on submitters as they continue to provide the same information through a different, streamlined portal.

In order to provide for a smooth transition to the 232 Exclusions Portal and avoid imposing costs on the public, the Department will continue to use *regulations.gov* for the processing of all exclusion requests that have already been filed or that are filed no later than June 12, 2019, including related submissions that are filed in *regulations.gov* after June 12, 2019, until the underlying exclusions requests receive a final decision.

Because a notice of proposed rulemaking and an opportunity for prior public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly,

no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 705

Administrative practice and procedure, Business and industry, Classified information, Confidential business information, Imports, Investigations, National security.

For the reasons set forth in the preamble, part 705 of subchapter A of 15 CFR chapter VII is amended as follows:

PART 705—[AMENDED]

■ 1. The authority citation for part 705 continues to read as follows:

Authority: Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862) and Reorg. Plan No. 3 of 1979 (44 FR 69273, December 3, 1979).

■ 2. Supplement No. 1 to part 705 is amended:
■ a. By revising paragraph (a);
■ b. By revising the introductory text of paragraph (b) and paragraphs (b)(1) through (4);
■ c. By revising paragraphs (b)(5)(iii)(A) through (C);
■ d. By revising paragraphs (c)(3) and (4);
■ e. By revising paragraph (d)(2) and (3);
■ f. By revising the first sentence of the introductory text of paragraph (f) and paragraphs (f)(1), (2), and (4);
■ g. By revising the first sentence of the introductory text of paragraph (g) and paragraphs (g)(1), (2), and (4);
■ h. By revising paragraphs (h)(2)(i) and (ii), (h)(2)(iii)(A), and (h)(3)(i); and
■ i. By revising paragraph (i).

The revisions read as follows:

Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Articles Into the United States

* * * * *

(a) *Scope.* This supplement specifies the requirements and process for how directly affected parties located in the United States may submit requests for exclusions from the duties and quantitative limitations imposed by the President. This supplement also specifies the requirements and process for how parties in the United States may submit objections to submitted exclusion requests for relief from the duties or quantitative limitations imposed by the President, and rebuttals to submitted objections and surrebuttals (collectively, ''232 submissions''). This supplement identifies the time periods for such submissions, the methods of submission, and the information that must be included in such submissions. This supplement references two different methods of submission for 232 submissions: One based on a legacy system used for 232 submissions (*www.regulations.gov*), and a second system based on a new portal developed by the U.S. Department of Commerce (232 Exclusions Portal), for receiving, managing and responding to 232 submissions. The *regulations.gov* system must be used for all exclusion requests submitted no later than June 12, 2019. Thereafter, beginning on June 13, 2019, all exclusion requests must be submitted on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). Objections, rebuttals, and surrebuttals must always be filed on the system where the exclusion request was submitted, whether in *www.regulations.gov* or in the 232 Exclusions Portal. For example, if the exclusion request was submitted in *www.regulations.gov,* any objections, rebuttals, and surrebuttals pertaining to that exclusion request would also only be submitted in *www.regulations.gov.* Conversely, if the exclusion request was submitted in the 232 Exclusions Portal, any objections, rebuttals, and surrebuttals pertaining to that exclusion request would also only be submitted in the 232 Exclusions Portal. The use of *regulations.gov* for the 232 exclusions process will end once all exclusion requests submitted to *regulations.gov* no later than June 12, 2019 have completed the 232 exclusions process pursuant to this supplement—meaning the exclusion, objection, rebuttal, and surrebuttal process have been completed and the U.S. Department of Commerce has made a final disposition of the 232 submissions.

(b) *Required forms.* For any exclusion request to be submitted no later than June 12, 2019, the U.S. Department of Commerce has posted four separate fillable forms on the BIS website at *https://www.bis.doc.gov/index.php/232-steel* and on the Federal rulemaking portal (*http://www.regulations.gov*) that are to be used for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On *regulations.gov*, you can find these four forms for steel exclusion requests, objections to exclusion requests, rebuttals to objections, and surrebuttals by searching for its *regulations.gov* docket number, which is BIS–2018–0006. For any exclusion request to be submitted on or after June 13, 2019, the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) includes four web-based forms that are to be used for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On the 232 Exclusions Portal, each web-based form is available on the portal at the bottom of the preceding filing. For example, a party submitting an objection will access the objection form by scrolling to the bottom of the exclusion request, the rebuttal filer will access the rebuttal form by scrolling to the bottom of the objection form, and the surrebuttal filer would access the surrebuttal form by scrolling to the bottom of the rebuttal form. The U.S. Department of Commerce requires requesters and objectors to use the appropriate form as specified under paragraphs (b)(1) and (2) of this supplement for submitting exclusion requests and objections to submitted exclusion requests, and the forms specified under paragraphs (b)(3) and (4) of this supplement for submitting rebuttals and surrebuttals. In addition, submitters of exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals to the 232 Exclusions Portal will be required to complete a web-based registration on the 232 Exclusions Portal prior to submitting any documents. In order to register, submitters will be required to provide an email and establish a password for the account. After completing the registration, submitters will be able to login to an account on the 232 Exclusions Portal and submit exclusion requests, objections, rebuttals and surrebuttal documents.

(1) *Form required for submitting exclusion requests.* The full name of the form used for submitting exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports.* The Title in *www.regulations.gov* is *Exclusion Request—Steel* and is posted under ID # BIS–2018–0006–0002. The Title of the web-based fillable form in the 232 Exclusions Portal is *Exclusion Request.*

(2) *Form required for submitting objections to submitted exclusion requests.* The name of the form used for submitting objections to submitted exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Steel.* The Title in *www.regulations.gov* is *Objection Filing—Steel* and is posted under ID # BIS–2018–0006–0003. The Title of the web-based fillable form in the 232 Exclusions Portal is *Objection.*

(3) *Form required for submitting rebuttals.* The name of the form used for submitting rebuttals to objections is

Rebuttal to Objection Received for Section 232 *Exclusion Request: Steel.* The Title in *www.regulations.gov* is *Rebuttal Filing—Steel* and is posted under ID # BIS–2018–0006–45144. The Title of the web-based fillable form in the 232 Exclusions Portal is *Rebuttal.*

(4) *Form required for submitting surrebuttals.* The name of the form used for submitting surrebuttals to objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Steel.* The Title in *www.regulations.gov* is *Surrebuttal Filing—Steel* and is posted under ID # BIS–2018–0006–45145. The Title of the web-based fillable form in the 232 Exclusions Portal is *Surrebuttal.*

Note to paragraphs (b)(1) through (4): On the 232 Exclusions Portal, each exclusion request is assigned a distinct ID #, which is also used with its associated 232 submissions, but preceded with an acronym indicating the file type: Exclusion Requests (ER ID #), Objection (OF ID #), Rebuttals (RB ID #) and Surrebuttals (SR ID #). For an example of the four possible types of 232 submissions associated with a single exclusion request, you could have ER ID 237, OF ID 237, RB ID 237 and SR ID 237. The 232 Exclusions Portal will automatically assign the two letter designator depending on the type of web-based form being submitted in the portal and will assign an ID number to the original exclusion request and that ID number will be common to any objection, rebuttal, or surrebuttal submitted pertaining to the same exclusion request.

(5) * * *

(iii) * * *

(A) On the same day that you submit your 232 submission in *www.regulations.gov* or in the 232 Exclusions Portal, send an email to the U.S. Department of Commerce. The email address used is different depending on the type of submission the emailed CBI is for, as follows: CBI for rebuttals use *232rebuttals@doc.gov;* and CBI for surrebuttals use *232surrebuttals@doc.gov.*

(B) For rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests submitted no later than June 12, 2019, the email subject line must only include the original *regulations.gov* exclusion request ID # (BIS–2018–000X–XXXXX) and the body of the email must include the 11-digit alphanumeric tracking number (XXX–XXXX–XXXX) you received from *regulations.gov* when you successfully submitted your rebuttal, or surrebuttal. For rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests submitted on or after June 13, 2019, the email subject line must only include the original 232 Exclusions Portal Exclusion Request (ER) ID # and the body of the email must include the 232 Exclusions Portal Rebuttal (RB) ID #, or Surrebuttal (SR) ID # you received from the 232 Exclusions Portal when you successfully submitted your rebuttal or surrebuttal. These naming conventions used in *www.regulations.gov* and in the 232 Exclusions Portal, respectively, will assist the U.S. Department of Commerce to associate the CBI that will not be posted in *regulations.gov* or in the 232 Exclusions Portal, with the information included in the public submission.

(C) Submit the CBI as an attachment to that email. The CBI is limited to a maximum of 5 pages per rebuttal or surrebuttal. The email is to be limited to sending your CBI. All other information for the public submission, and public versions of the CBI, where appropriate, for a 232 submission must be submitted using *www.regulations.gov* or in the 232 Exclusions Portal following the procedures identified in this supplement, as appropriate.

* * * * *

(c) * * *

(3) *Where to submit exclusion requests?* All exclusion requests submitted no later than June 12, 2019 must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*). You can find the interim final rule that added this supplement by searching for the *regulations.gov* docket number, which is BIS–2018–0006. All exclusion requests submitted on or after June 13, 2019, must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(4) *No time limit for submitting exclusion requests.* Exclusion requests may be submitted at any time, but the date of submission determines whether an exclusion request must be submitted via *regulations.gov* or via the new 232 Exclusions Portal, as indicated in paragraph (c)(3) of this supplement. The U.S. Department of Commerce will reject, and require resubmission using the correct submission method, of any exclusion request that does not use the correct submission method specified in this supplement based on the date of submission. Strict adherence to the correct submission method based on the date of an exclusion request's submission is required to ensure the efficient, fair, and transparent processing of exclusion requests during the transition period by the U.S. Department of Commerce, and to enable the Department to complete the transition to the 232 Exclusions Portal as quickly as possible.

* * * * *

(d) * * *

(2) *Identification of objections to submitted exclusion requests.* (i) *Objections to submitted exclusion requests in regulations.gov.* When submitting an objection to an exclusion request that was submitted no later than June 12, 2019, the objector must locate the exclusion request and submit a comment on the submitted exclusion request in *regulations.gov.* The file name of the objection submission should include the objector's name, date of submission of the objection, name of the organization that submitted the exclusion request, and date the exclusion request was posted. For example, if Company B is submitting on April 1, 2018, an objection to an exclusion request submitted by Company A on March 15, 2018, the file should be named: ''Company B objection_4–1–18 for Company A exclusion request_3–15–18.'' In *regulations.gov* once an objection to a submitted exclusion request is posted, the objection will appear as a document under the related exclusion request.

(ii) *Objections to submitted exclusion requests in the 232 Exclusions Portal.* When submitting an objection to a submitted exclusion request that was submitted on or after June 13, 2019, the objector must locate the exclusion request and submit the objection in response to the request directly in the 232 Exclusions Portal. Once the relevant exclusion request has been located, an individual or organization that would like to submit an objection will access the objection form by scrolling to the bottom of the exclusion request form and then filling out the web-based form for submitting their objection to the exclusion request in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(3) *Time limit for submitting objections to submitted exclusions requests.* All objections to submitted exclusion requests that were submitted no later than June 12, 2019 must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*) no later than 30 days after the related exclusion request is posted. All objections to submitted exclusion requests that were submitted on or after June 13, 2019, must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) no later than 30 days after the related exclusion request is posted.

* * * * *

(f) *Rebuttal process.* Only individuals or organizations that have submitted an exclusion request pursuant to this

supplement may submit a rebuttal to any objection(s) posted to their exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*) or in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). * * *

(1) *Identification of rebuttals.* (i) *Identification of rebuttals in regulations.gov.* When submitting a rebuttal, the individual or organization that submitted the exclusion request submits a comment on the objection submitted to the exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to this part for a five-step process for how to submit rebuttals. Annex 1 describes the naming convention used for identification of rebuttals and the steps needed to identify objections to exclusion requests when using *www.regulations.gov* to submit a rebuttal. Submitters of rebuttals must follow the steps described in Annex 1, including following the naming convention of rebuttals. In *regulations.gov* once a rebuttal to an objection to a submitted exclusion request is posted, the rebuttal will appear as a document under the related exclusion request.

(ii) *Identification of rebuttals in 232 Exclusions Portal.* When submitting a rebuttal, the individual or organization that submitted the exclusion request will access the rebuttal form by scrolling to the bottom of the objection form and then filling out the web-based form for submitting their rebuttal to the objection in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for rebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement and the objection process identified under paragraph (d) of this supplement, the rebuttal process requires the submission of a government form as specified in paragraph (b)(3) of this supplement. The rebuttal must be in writing and submitted in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. Each rebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

* * * * *

(4) *Time limit for submitting rebuttals.* The rebuttal period begins on the date the Department opens the rebuttal period after the posting of the last objection in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. This beginning date will be sometime between thirty-one to forty-five days (a fifteen day range) after an exclusion request has been posted. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any objections submitted to determine whether the objections are complete and should be posted in *regulations.gov* or in the 232 Exclusions Portal. The rebuttal period ends seven days after the rebuttal comment period is opened. This seven day rebuttal period allows for the individual or organization that submitted an exclusion request pursuant to this supplement to submit any written rebuttals that it believes are warranted.

Note to paragraph (f)(4): For exclusion requests that received an objection(s) but for which the U.S. Department of Commerce has not posted a final determination on the exclusion request as of September 11, 2018, the Department will reopen the requests to allow for the submission of rebuttals. The Department will reopen the requests on a rolling basis starting on September 11, 2018, and will seek to complete the reopening process on the date that is seven days after September 18, 2018, to serve as the start date for the review periods identified in paragraph (f)(4) of this supplement for those requests.

(g) *Surrebuttal process.* Only individuals or organizations that have a posted objection to a submitted exclusion request pursuant to this supplement may submit a surrebuttal to a rebuttal (*see* paragraph (f) of this supplement) posted to their objection to an exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*) or in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). * * *

(1) *Identification of surrebuttals.* (i) *Identification of surrebuttals in regulations.gov.* When submitting a surrebuttal, the individual or organization that submitted the objection to an exclusion request would submit a comment on the submitted rebuttal to the objection submitted in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to this part for a five-step process for how to submit surrebuttals. Annex 1 describes the naming convention used for identification of surrebuttals and the steps needed to identify rebuttals when using *www.regulatons.gov* to submit a surrebuttal. Submitters of surrebuttals must follow the steps described in Annex 1, including following the naming convention of surrebuttals. In *regulations.gov* once a surrebuttal to a rebuttal to an objection to a submitted exclusion request is posted, the surrebuttal will appear as a document under the related exclusion request.

(ii) *Identification of surrebuttals in the 232 Exclusions Portal.* When submitting a surrebuttal, the individual or organization that submitted the objection will access the surrebuttal form by scrolling to the bottom of the rebuttal form and then filling out the web-based form for submitting their surrebuttal to the rebuttal in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for surrebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement, the objection process identified under paragraph (d) of this supplement, and the rebuttal process identified under paragraph (f) of this supplement, the surrebuttal process requires the submission of a government form as specified in paragraph (b)(4) of this supplement. The surrebuttal must be in writing and submitted in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. Each surrebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

* * * * *

(4) *Time limit for submitting surrebuttals.* The surrebuttal period begins on the date the Department opens the surrebuttal comment period after the posting of the last rebuttal to an objection to an exclusion request in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. This will be sometime within a fifteen-day range after the rebuttal period has closed. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any rebuttals to

objections submitted to determine whether the rebuttals are complete and should be posted in *regulations.gov* or in the 232 Exclusions Portal. The surrebuttal period ends seven days after the surrebuttal comment period is opened. This seven-day surrebuttal period allows for the individual or organization that submitted an objection to a submitted exclusion request pursuant to this supplement to submit any written surrebuttals that it believes are warranted to respond to a rebuttal.

(h) * * *

(2) *Disposition of complete submissions.* (i) *Posting of responses.* (A) *Responses in regulations.gov.* The U.S. Department of Commerce will post responses (decision memos) in *regulations.gov* to each exclusion request submitted no later than June 12, 2019 under docket number BIS–2018–0006. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted under docket number BIS–2018–0006.

(B) *Responses in the 232 Exclusions Portal.* The U.S. Department of Commerce will post responses (decision memos) in the 232 Exclusions Portal to each exclusion request submitted on or after June 13, 2019. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted through the 232 Exclusions Portal.

(ii) *Streamlined review process for ''No Objection'' requests.* The U.S. Department of Commerce will grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. If an exclusion request's 30-day comment period on *regulations.gov* or in the 232 Exclusions Portal (based on which submission method was used for the submission of the exclusion request) has expired and no objections have been submitted, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will post a decision granting the exclusion request on *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal.

(iii) *Effective date for approved exclusions and date used for calculating duty refunds.* (A) *Effective date for approved exclusions.* Approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in *regulations.gov* or in the 232 Exclusions Portal, based on which submission method was used for the submission of the exclusion request. Starting on that date, the requester will be able to rely upon the approved exclusion request in calculating the duties owed on the product imported in accordance with the terms listed in the approved exclusion request.

* * * * *

(3) *Review period and implementation of any needed conforming changes.* (i) *Review period.* The review period normally will not exceed 106 days for requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals. The estimated 106-day period begins on the day the exclusion request is posted in either *regulations.gov* or in the 232 Exclusions Portal, and ends once a decision to grant or deny is made on the exclusion request.

* * * * *

(i) *For further information.* If you have questions on this supplement, you may contact Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–5642 or *Steel232@bis.doc.gov* regarding steel exclusion requests. *See* Annex 1 to Supplements Nos. 1 and 2 to this part for application issues that are specific to using *www.regulations.gov* for submitting rebuttals and surrebuttals under these two supplements for exclusion requests submitted no later than June 12, 2019. The U.S. Department of Commerce has posted in *regulations.gov* training documents to assist your understanding when submitting exclusion requests and objections, including step-by-step screen shots of the process when using *regulations.gov*. The U.S. Department of Commerce website also includes FAQs, best practices other companies have used for submitting exclusion requests and objections, and helpful checklists. The U.S. Department of Commerce has also included a manual providing instruction on the 232 Exclusions Portal for exclusion requests submitted on or after June 13, 2019, titled 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'') and posted online at (*https://www.commerce.gov/page/section-232-investigations*) to assist your understanding when making 232 submissions in the 232 Exclusions Portal.

■ 3. Supplement No. 2 to part 705 is amended:

■ a. By revising paragraph (a);

■ b. By revising the introductory text of paragraph (b) and paragraphs (b)(1) through (4);

■ c. By revising paragraphs (b)(5)(iii)(A) through (C);

■ d. By revising paragraphs (c)(3) and (4);

■ e. By revising paragraph (d)(2) and (3);

■ f. By revising the first sentence of the introductory text of paragraph (f) and paragraphs (f)(1), (2), and (4);

■ g. By revising the first sentence of the introductory text of paragraph (g) and paragraphs (g)(1), (2), and (4);

■ h. By revising paragraphs (h)(2)(i) and (ii), (h)(2)(iii)(A), and (h)(3)(i); and

■ i. By revising paragraph (i).

The revisions read as follows:

Supplement No. 2 to Part 705—Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamation 9704 of March 8, 2018 to Adjusting Imports of Aluminum Into the United States

* * * * *

(a) *Scope.* This supplement specifies the requirements and process for how directly affected parties located in the United States may submit requests for exclusions from the duties and quantitative limitations imposed by the President. This supplement also specifies the requirements and process for how parties in the United States may submit objections to submitted exclusion requests for relief from the duties or quantitative limitations imposed by the President, and rebuttals to submitted objections and surrebuttals (collectively, ''232 submissions''). This supplement identifies the time periods for such submissions, the methods of submission, and the information that must be included in such submissions. This supplement references two different methods of submission for 232 submissions: One based on a legacy system used for 232 submissions (*www.regulations.gov*), and a second system based on a new portal developed by the U.S. Department of Commerce, (232 Exclusions Portal) for receiving, managing and responding to 232 submissions. The *regulations.gov* system must be used for all exclusion requests submitted no later than June 12, 2019. Thereafter, beginning on June 13, 2019, all exclusion requests must be submitted on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). Objections, rebuttals, and surrebuttals must always be filed on the system where the exclusion request was submitted

whether in *www.regulations.gov,* or in the 232 Exclusions Portal. For example, if the exclusion request was submitted in *www.regulations.gov,* any objections, rebuttals, and surrebuttals pertaining to that exclusion request would also only be submitted in *www.regulations.gov.* Conversely, if the exclusion request was submitted in the 232 Exclusions Portal, any objections, rebuttals, and surrebuttals pertaining to that exclusion request would also only be submitted in the 232 Exclusions Portal. The use of *regulations.gov* for the 232 exclusions process will end once all exclusion requests submitted to *regulations.gov* no later than June 12, 2019 have completed the 232 exclusions process pursuant to this supplement—meaning the exclusion, objection, rebuttal, and surrebuttal process have been completed and the U.S. Department of Commerce has made a final disposition of the 232 submissions.

(b) *Required forms.* For any exclusion request to be submitted no later than June 12, 2019, the U.S. Department of Commerce has posted four separate fillable forms on the BIS website at *https://www.bis.doc.gov/index.php/232-aluminum* and on the Federal rulemaking portal (*http://www.regulations.gov*) that are to be used by organizations for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On *regulations.gov*, you can find these four forms for aluminum exclusion requests, objections to exclusion requests, rebuttals to objections, and surrebuttals by searching for its *regulations.gov* docket number, which is BIS–2018–0002. For any exclusion request to be submitted on or after June 13, 2019, the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) includes four web-based forms that are to be used for submitting exclusion requests, objections to exclusion requests, rebuttals, and surrebuttals described in this supplement. On the 232 Exclusions Portal, each web-based form is available on the portal at the bottom of the preceding filing. For example, a party submitting an objection will access the objection form by scrolling to the bottom of the exclusion request, the rebuttal filer will access the rebuttal form by scrolling to the bottom of the objection form, and the surrebuttal filer would access the surrebuttal form by scrolling to the bottom of the rebuttal form. The U.S. Department of Commerce requires requesters and objectors to use the appropriate form as specified under paragraphs (b)(1) and (2) of this supplement for submitting exclusion requests and objections to submitted exclusion requests, and the forms specified under paragraphs (b)(3) and (4) of this supplement for submitting rebuttals and surrebuttals. In addition, submitters of exclusion requests, objections to submitted exclusion requests, rebuttals, and surrebuttals to the 232 Exclusions Portal will be required to complete a web-based registration on the 232 Exclusions Portal prior to submitting any documents. In order to register, submitters will be required to provide an email and establish a password for the account. After completing the registration, submitters will be able to login to an account on the 232 Exclusions Portal and submit exclusion requests, objections, rebuttals and surrebuttal documents.

(1) *Form required for submitting exclusion requests.* The full name of the form used for submitting exclusion requests is *Request for Exclusion from Remedies: Section 232 National Security Investigation of Aluminum Imports.* The Title in *www.regulations.gov* is *Exclusion Request—Aluminum* and is posted under ID # BIS–2018–0002–0002. The Title of the web-based fillable form in the 232 Exclusions Portal is *Exclusion Request.*

(2) *Form required for submitting objections to submitted exclusion requests.* The name of the form used for submitting objections to submitted exclusion requests is *Objection Filing to Posted Section 232 Exclusion Request: Aluminum.* The Title in *www.regulations.gov* is *Objection Filing—Aluminum* and is posted under ID # BIS–2018–0002–0003. The Title of the web-based fillable form in the 232 Exclusions Portal is *Objection.*

(3) *Form required for submitting rebuttals.* The name of the form used for submitting rebuttals to objections is *Rebuttal to Objection Received for Section* 232 *Exclusion Request: Aluminum.* The Title in *www.regulations.gov* is *Rebuttal Filing—Aluminum* and is posted under ID # BIS–2018–0002–4393. The Title of the web-based fillable form in the 232 Exclusions Portal is *Rebuttal.*

(4) *Form required for submitting surrebuttals.* The name of the form used for submitting surrebuttals to objections is *Surrebuttal to Rebuttal Received on Section 232 Objection: Aluminum.* The Title in *www.regulations.gov* is *Surrebuttal Filing—Aluminum* and is posted under ID # BIS–2018–0002–4394. The Title of the web-based fillable form in the 232 Exclusions Portal is *Surrebuttal.*

Note to paragraphs (b)(1) through (4): On the 232 Exclusions Portal, each exclusion request is assigned a distinct ID#, which is also used with its associated 232 submissions, but preceded with an acronym identifying the file type: Exclusion Requests (ER ID#), Objection (OF ID#), Rebuttals (RB ID#) and Surrebuttals (SR ID#). For an example of the four possible types of 232 submissions associated with a single exclusion request, you could have ER ID 237, OF ID 237, RB ID 237 and SR ID 237. The 232 Exclusions Portal will automatically assign the two letter designator depending on the type of web-based form being submitted in the portal and will assign an ID number to the original exclusion request and that ID number will be common to any objection, rebuttal, or surrebuttal submitted pertaining to the same exclusion request.

(5) * * *

(iii) * * *

(A) On the same day that you submit your 232 submission in *www.regulations.gov* or in the 232 Exclusions Portal, send an email to the U.S. Department of Commerce. The email address used is different depending on the type of submission the emailed CBI is for, as follows: CBI for rebuttals use *232rebuttals@doc.gov;* and CBI for surrebuttals use *232surrebuttals@doc.gov.*

(B) For rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests submitted no later than June 12, 2019, the email subject line must only include the original *regulations.gov* exclusion request ID # (BIS–2018–000X–XXXXX) and the body of the email must include the 11-digit alphanumeric tracking number (XXX–XXXX–XXXX) you received from *regulations.gov* when you successfully submitted your rebuttal, or surrebuttal. For rebuttals and surrebuttals pertaining to 232 submissions for exclusion requests submitted on or after June 13, 2019, the email subject line must only include the original 232 Exclusions Portal (Exclusion Request (ER)) ID # and the body of the email must include the 232 Exclusions Portal Rebuttal (RB) ID #, or Surrebuttal (SR) ID# you received from the 232 Exclusions Portal when you successfully submitted your rebuttal, or surrebuttal. These naming conventions used in *www.regulations.gov* and in the 232 Exclusions Portal, respectively, will assist the U.S. Department of Commerce to associate the CBI that will not be posted in *regulations.gov* or in the 232 Exclusions Portal, with the information included in the public submission.

(C) Submit the CBI as an attachment to that email. The CBI is limited to a maximum of 5 pages per rebuttal or

surrebuttal. The email is to be limited to sending your CBI. All other information for the public submission, and public versions of the CBI, where appropriate, for a 232 submission must be submitted using *www.regulations.gov* or in the 232 Exclusions Portal following the procedures identified in this supplement, as appropriate.

* * * * *

(c) * * *

(3) *Where to submit exclusion requests*? All exclusion requests submitted no later than June 12, 2019 must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*). You can find the interim final rule that added this supplement by searching for the *regulations.gov* docket number, which is BIS–2018–0002. All exclusion requests submitted on or after June 13, 2019, must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(4) *No time limit for submitting exclusion requests.* Exclusion requests may be submitted at any time, but the date of submission determines whether an exclusion request must be submitted via *regulations.gov* or via the new 232 Exclusions Portal, as indicated in paragraph (c)(3) of this supplement. The U.S. Department of Commerce will reject and require resubmission using the correct submission method, of any exclusion request that does not use the correct submission method specified in this supplement based on the date of submission. Strict adherence to the correct submission method based on the date of an exclusion request's submission is required to ensure the efficient, fair, and transparent processing of exclusion requests during the transition period by the U.S. Department of Commerce, and to enable the Department to complete the transition to the 232 Exclusions Portal as quickly as possible.

* * * * *

(d) * * *

(2) *Identification of objections to submitted exclusion requests*—(i) *Objections to submitted exclusion requests in regulations.gov.* When submitting an objection to an exclusion request that was submitted no later than June 12, 2019, the objector must locate the exclusion request and submit a comment on the submitted exclusion request in *regulations.gov*. The file name of the objection submission should include the objector's name, date of submission of the objection, name of the organization that submitted the exclusion request, and date the exclusion request was posted. For example, if Company X is submitting on April 1, 2018, an objection to an exclusion request submitted by Company A on March 15, 2018, the file should be named: ''Company X objection_4–1–18 for Company A exclusion request_3–15–18.'' In *regulations.gov* once an objection to a submitted exclusion request is posted, the objection will appear as a document under the related exclusion request.

(ii) *Objections to submitted exclusion requests in the 232 Exclusions Portal.* When submitting an objection to a submitted exclusion request that was submitted on or after June 13, 2019, the objector must locate the exclusion request and submit the objection in response to the request, directly in the 232 Exclusions Portal. Once the relevant exclusion request has been located, an individual or organization that would like to submit an objection will access the objection form by scrolling to the bottom of the exclusion request form and then filling out the web-based form for submitting their objection to the exclusion request in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(3) *Time limit for submitting objections to submitted exclusions requests.* All objections to submitted exclusion requests that were submitted no later than June 12, 2019 must be in electronic form and submitted to the Federal rulemaking portal (*http://www.regulations.gov*) no later than 30 days after the related exclusion request is posted. All objections to submitted exclusion requests that were submitted on or after June 13, 2019, must be submitted directly on the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*) no later than 30 days after the related exclusion request is posted.

* * * * *

(f) *Rebuttal process.* Only individuals or organizations that have submitted an exclusion request pursuant to this supplement may submit a rebuttal to any objection(s) posted to their exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*) or in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). * * *

(1) *Identification of rebuttals.* (i) *Identification of rebuttals in regulations.gov.* When submitting a rebuttal, the individual or organization that submitted the exclusion request submits a comment on the objection to the submitted exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to this part for a five-step process for how to submit rebuttals. Annex 1 describes the naming convention used for identification of rebuttals and the steps needed to identify objections to exclusion requests when using *www.regulations.gov* to submit a rebuttal. Submitters of rebuttals must follow the steps described in Annex 1, including following the naming convention of rebuttals. In *regulations.gov* once a rebuttal to an objection to a submitted exclusion request is posted, the rebuttal will appear as a document under the related exclusion request.

(ii) *Identification of rebuttals in 232 Exclusions Portal.* When submitting a rebuttal, the individual or organization that submitted the exclusion request will access the rebuttal form by scrolling to the bottom of the objection form and then filling out the web-based form for submitting their rebuttal to the objection in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for rebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement and the objection process identified under paragraph (d) of this supplement, the rebuttal process requires the submission of a government form as specified in paragraph (b)(3) of this supplement. The rebuttal must be in writing and submitted in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. Each rebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the rebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

* * * * *

(4) *Time limit for submitting rebuttals.* The rebuttal period begins on the date the Department opens the rebuttal period after the posting of the last objection in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. This beginning date will be sometime between thirty-one to forty-five days (a fifteen day range) after an exclusion request has been posted. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any objections

submitted to determine whether the objections are complete and should be posted in *regulations.gov* or in the 232 Exclusions Portal. The rebuttal period ends seven days after the rebuttal comment period is opened. This seven day rebuttal period allows for the individual or organization that submitted an exclusion request pursuant to this supplement to submit any written rebuttals that it believes are warranted.

Note to paragraph (f)(4): For exclusion requests that received an objection(s) but for which the U.S. Department of Commerce has not posted a final determination on the exclusion request as of September 11, 2018, the Department will reopen the requests to allow for the submission of rebuttals. The Department will reopen the requests on a rolling basis starting on September 11, 2018, and will seek to complete the reopening process on the date that is seven days after September 18, 2018, to serve as the start date for the review periods identified in paragraph (f)(4) of this supplement for those requests.

(g) *Surrebuttal process.* Only individuals or organizations that have a posted objection to a submitted exclusion request pursuant to this supplement may submit a surrebuttal to a rebuttal (*see* paragraph (f) of this supplement) posted to their objection to an exclusion request in the Federal rulemaking portal (*http://www.regulations.gov*) or in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*). * * *

(1) *Identification of surrebuttals.* (i) *Identification of surrebuttals in regulations.gov.* When submitting a surrebuttal, the individual or organization that submitted the objection to an exclusion request would submit a comment on the submitted rebuttal to the objection submitted in the Federal rulemaking portal (*http://www.regulations.gov*). *See* Annex 1 to Supplements No. 1 and 2 to this part for a five-step process for how to submit surrebuttals. Annex 1 describes the naming convention used for identification of surrebuttals and the steps needed to identify rebuttals in regulations when using *www.regulations.gov* to submit a surrebuttal. Submitters of surrebuttals must follow the steps described in Annex 1, including following the naming convention of surrebuttals. In *regulations.gov* once a surrebuttal to a rebuttal to an objection to a submitted exclusion request is posted, the surrebuttal will appear as a document under the related exclusion request.

(ii) *Identification of surrebuttals in the 232 Exclusions Portal.* When submitting a surrebuttal, the individual or organization that submitted the objection will access the surrebuttal form by scrolling to the bottom of the rebuttal form and then filling out the web-based form for submitting their surrebuttal to the rebuttal in the 232 Exclusions Portal (*https://www.commerce.gov/page/section-232-investigations*).

(2) *Format and size limitations for surrebuttals.* Similar to the exclusions process identified under paragraph (c) of this supplement, the objection process identified under paragraph (d) of this supplement, and the rebuttal process identified under paragraph (f) of this supplement, the surrebuttal process requires the submission of a government form as specified in paragraph (b)(4) supplement. The surrebuttal must be in writing and submitted in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. Each surrebuttal is to be limited to a maximum of 10 pages, inclusive of all exhibits and attachments, but exclusive of the surrebuttal form and any CBI provided to the U.S. Department of Commerce. Each attachment to a submission must be less than 10 MB.

* * * * *

(4) *Time limit for submitting surrebuttals.* The surrebuttal period begins on the date the Department opens the surrebuttal period, after the posting of the last rebuttal to an objection to an exclusion request in *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal. This will be sometime within a fifteen-day range after the rebuttal period has closed. The range of days is needed to account for time needed by the U.S. Department of Commerce to review any rebuttals to objections submitted to determine whether the rebuttals are complete and should be posted in *regulations.gov* or in the 232 Exclusions Portal. The surrebuttal period ends seven days after the surrebuttal period is opened. This seven-day surrebuttal period allows for the individual or organization that submitted an objection to a submitted exclusion request pursuant to this supplement to submit any written surrebuttals that it believes are warranted to respond to a rebuttal.

(h) * * *

(2) *Disposition of complete submissions.* (i) *Posting of responses.* (A) *Responses in regulations.gov.* The U.S. Department of Commerce will post responses (decision memos) in *regulations.gov* to each exclusion request submitted no later than June 12, 2019 under docket number BIS–2018–0002. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s), and surrebuttal(s) for that submitted exclusion request submitted under docket number BIS–2018–0002.

(B) *Responses in the 232 Exclusions Portal.* The U.S. Department of Commerce will post responses (decision memos) in the 232 Exclusions Portal to each exclusion request submitted on or after June 13, 2019. The U.S. Department of Commerce response to an exclusion request will also be responsive to any of the objection(s), rebuttal(s) and surrebuttal(s) for that submitted exclusion request submitted through the 232 Exclusions Portal.

(ii) *Streamlined review process for ''No Objection'' requests.* The U.S. Department of Commerce will grant properly filed exclusion requests which meet the requisite criteria, receive no objections, and present no national security concerns. If an exclusion request's 30-day comment period on *regulations.gov* or in the 232 Exclusions Portal (based on which submission method was used for the submission of the exclusion request) has expired and no objections have been submitted, BIS will immediately assess the request for any national security concerns. If BIS identifies no national security concerns, it will post a decision granting the exclusion request on *regulations.gov* if the exclusion request was submitted via *regulations.gov*, or in the 232 Exclusions Portal if the exclusion request was submitted via the 232 Exclusions Portal.

(iii) *Effective date for approved exclusions and date used for calculating duty refunds.* (A) *Effective date for approved exclusions.* Approved exclusions will be effective five business days after publication of the U.S. Department of Commerce response granting an exclusion in *regulations.gov* or in the 232 Exclusions Portal, based on which submission method was used for the submission of the exclusion request. Starting on that date, the requester will be able to rely upon the approved exclusion request in calculating the duties owed on the product imported in accordance with the terms listed in the approved exclusion request.

* * * * *

(3) *Review period and implementation of any needed conforming changes.* (i) *Review period.* The review period normally will not exceed 106 days for

requests that receive objections, including adjudication of objections submitted on exclusion requests and any rebuttals to objections, and surrebuttals. The estimated 106-day period begins on the day the exclusion request is posted in either *regulations.gov* or in the 232 Exclusions Portal and ends once a decision to grant or deny is made on the exclusion request.

* * * * *

(i) *For further information.* If you have questions on this supplement, you may contact Director, Industrial Studies, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, at (202) 482–4757 or *Aluminum232@bis.doc.gov* regarding aluminum exclusion requests. *See* Annex 1 to Supplements Nos. 1 and 2 to this part for application issues that are specific to using *www.regulations.gov* for submitting rebuttals and surrebuttals under these two supplements for exclusion requests submitted no later than June 12, 2019. The U.S. Department of Commerce has posted in *regulations.gov* training documents to assist your understanding when submitting 232 submissions. These documents include step-by-step screen shots of the process for using *regulations.gov*. The U.S. Department of Commerce website also includes FAQs and best practices other companies have used for submitting exclusion requests and objections. The U.S. Department of Commerce has also included a manual providing instruction on the 232 Exclusions Portal for exclusion requests submitted on or after June 13, 2019, titled 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'') and posted online at (*https://www.commerce.gov/page/section-232-investigations*) to assist your understanding when making 232 submissions in the 232 Exclusions Portal.

■ 4. Annex 1 to Supplements No. 1 and 2 to part 705 is amended by adding introductory text before the phrase ''HOW TO FILE REBUTTAL COMMENTS'' to read as follows:

Annex 1 to Supplements No. 1 and 2 to Part 705—Steps for Using *Regulations.gov* to File Rebuttals and Surrebuttals

These steps for how to file rebuttal and surrebuttal comments are only applicable to exclusion requests submitted no later than June 12, 2019 in *regulations.gov*. For guidance on how to file rebuttal and surrebuttal comments to exclusion requests submitted on or after June 13, 2019, in the 232 Exclusions Portal, see the manual, 232 Exclusions Portal Comprehensive Guide (''232 Exclusions Guide'') posted online at (*https://www.commerce.gov/page/section-232-investigations*).

* * * * *

Dated: June 6, 2019.

Nazak Nikakhtar,

Assistant Secretary for Industry and Analysis, performing the nonexclusive functions and duties of the Under Secretary for Industry and Security.

[FR Doc. 2019–12254 Filed 6–6–19; 4:15 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2017–0911]

RIN 1625–AA09

Drawbridge Operation Regulation; Red River, Shreveport, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the draws of the Union Pacific Railroad bridge, mile 227.0, and the Midsouth Railroad bridge, mile 228.2, across the Red River at Shreveport, LA. This final rule will allow for the drawbridges to remain in the closed-to-navigation position. While there is vessel traffic on the waterway, no one has requested that either drawbridge be open since 2007. Union Pacific Railroad and Midsouth Railroad, the bridge owners, requested to update the operating schedule accordingly.

DATES: This rule is effective on July 10, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2017–0911. In the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@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 June 21, 2018, we published a notice of proposed rulemaking (NPRM) entitled *Drawbridge Operation Regulation; Red River, Shreveport, LA* in the **Federal Register** (83 FR 28785). We received 9 comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. This rule changes the operating schedule for two bridges by revising the regulations governing the Red River drawbridge operating requirements under 33 CFR 117.491(c). Currently, this operating schedule applies to the draws of all bridges on the Red River from, mile 105.8 through mile 234.4. The operating schedule changes will allow the drawbridges to remain closed to the passage of vessels. However, pursuant 33 CFR 117.39, this rule includes a provision that requires the owner or agency controlling the bridge to bring the draw into full operational capability within three months if the District Commander provides a notification that needs of navigation require resumed operation of the spans.

Navigation on the Red River in the vicinity of these bridges consists primarily of recreational craft, and commercial use of the waterway is only possible during periods of high water. Moreover, the U.S. Army Corps of Engineers does not maintain any project depth or navigable channel on this reach of the Red River, nor does the U.S. Coast Guard maintain any aids to navigation above mile 211.4. Under 33 CFR 117.491(d), the bridges above mile 234.4 need not open for the passage of vessels. There are no alternate routes for vessels transiting this section of the Red River.

Union Pacific Railroad owns the Union Pacific Railroad bridge, mile 227.0, across the Red River at Shreveport, LA, and has requested that the drawbridge regulation be amended to allow the bridge to remain in the permanently closed position. Union Pacific provided the Coast Guard with bridge logs that indicate that there has been no request for a bridge opening since 2007. In the closed position, the Union Pacific Railroad bridge, mile 227.0, provides 15.1 feet of vertical clearance at mean high water.

Midsouth Railroad owns the Midsouth Railroad bridge, mile 228.2, across the Red River at Shreveport, LA,

and has also requested that the drawbridge remain in the permanently closed position. Midsouth Railroad provided the Coast Guard with bridge logs that indicate that there has been no request for a bridge opening since 2007. In the closed position, the Midsouth Railroad bridge, mile 228.2, provides 37.0 feet of vertical clearance at mean high water.

Under 33 CFR 117.39, the District Commander may authorize a drawbridge to remain in the closed to navigation position and be untended when there have been no requests for drawbridge openings for two years. Due to the lack of significant navigation on this portion of the Red River that requires draws to open and the fact that there has been no request to open the draws in over ten years, the Coast Guard believes that this rule is reasonable and should continue to meet the present and future needs of navigation. Based on the records provided by Union Pacific Railroad and Midsouth Railroad, it is expected that the change will have no known impact to navigation or other waterway users.

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

The Coast Guard provided a comment period of 60 days and nine comments were received. All nine comments were concerned the drawbridges will be permanently closed-to-navigation. The intent for the rule change is not to permanently close the draws, but allow for the drawbridges to remain in the closed-to-navigation position until the need of navigation resumes, at which time the draws will be required to open within three months notice from the District Commander.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the logs that were provided by the bridge owners indicating that there has been no request for a bridge opening since 2007. Moreover, once the needs of navigation require the resumed operation of the spans, the owner or agency of the drawbridges will be notified by the District Commander to restore the draws to full operation within three months.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above this final rule would 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**, above.

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 would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

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 Management Directive 023–01 and Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under

figure 2–1, paragraph (32)(e), of the Instruction.

A Record of Environmental Consideration and a Memorandum for the Record are not required for this 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.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 117.491 by revising paragraph (c) to read as follows:

§ 117.491 Red River.

* * * * *

(c) The draws of the bridges above mile 105.8 through mile 234.4 need not open for passage of vessels. The owner or agency controlling the bridge must restore the draw to full operation within three months if notified by the District Commander that the needs of navigation require resumed operation of the spans.

* * * * *

Dated: April 29, 2019.

P.F. Thomas,

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

[FR Doc. 2019–12126 Filed 6–7–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190312234–9412–01]

RIN 0648–GAR–A004

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to VA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2019 commercial summer flounder quota to the Commonwealth of Virginia. This quota adjustment is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised commercial quotas for North Carolina and Virginia.

DATES: Effective June 7, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Ferrio, Fishery Management Specialist, (978) 281–9180.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102, and the revised 2019 allocations were published on May 17, 2019 (84 FR 22392).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i)(A) through (C) in the evaluation of requests for quota transfers or combinations.

North Carolina is transferring 36,990 lb (16,778 kg) of summer flounder commercial quota to Virginia through mutual agreement of the states. This transfer was requested to repay landings made by North Carolina-permitted vessels in Virginia under a safe harbor agreement. The revised summer flounder quotas for fishing year 2019 are now: North Carolina, 2,974,117 lb (1,349,037 kg); and Virginia, 2,378,210 lb (1,078,738 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 5, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–12155 Filed 6–7–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 111
Monday, June 10, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN85

Prevailing Rate Systems; Redefinition of Certain Nonappropriated Fund Federal Wage System Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the geographic boundaries of several nonappropriated fund (NAF) Federal Wage System (FWS) wage areas. Based on consensus recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC), the Office of Personnel Management (OPM) proposes to define St. Joseph County, Indiana, as an area of application county to the Lake, Illinois, NAF FWS wage area; Greene County, Missouri, as an area of application county to the Leavenworth-Jackson-Johnson, Kansas, NAF FWS wage area; Lucas County, Ohio, as an area of application county to the Macomb, Michigan, NAF FWS wage area; and the municipality of Mayaguez, Puerto Rico, as an area of application county to the Guaynabo-San Juan, PR, NAF FWS wage area. These changes are necessary because NAF FWS employees are now working in these locations, but the locations are not currently defined to NAF wage areas. In addition, OPM is proposing to remove the municipalities of Ceiba, Isabela, Toa Baja, and Vieques, PR, and the U.S. Virgin Islands of St. Croix and St. Thomas, from the wage area definition of the Guaynabo-San Juan NAF wage area because there are no longer NAF FWS employees working in these locations.

DATES: Send comments on or before July 10, 2019.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

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

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule that would make changes to several NAF FWS wage area definitions. The Department of Veterans Affairs notified OPM that the Veterans Canteen Service (VCS) now employs NAF FWS employees in St. Joseph County, IN; Greene County, MO; Lucas County, OH; and the municipality of Mayaguez, PR. In addition, OPM is proposing to remove the municipalities of Ceiba, Isabela, Toa Baja, and Vieques, PR, and the U.S. Virgin Islands of St. Croix and St. Thomas, from the wage area definition of the Guaynabo-San Juan NAF FWS wage area because there are no longer NAF FWS employees working in these locations.

Under § 532.219 of title 5, Code of Federal Regulations (CFR), each NAF wage area ''shall consist of one or more survey areas, along with nonsurvey areas, if any, having nonappropriated fund employees.'' St. Joseph, Greene, and Lucas Counties, and the municipality of Mayaguez, PR, do not meet the regulatory criteria under 5 CFR 532.219 to be established as separate NAF wage areas; however, nonsurvey counties may be combined with a survey area to form a wage area. Section 532.219 lists the regulatory criteria that OPM considers when defining FWS wage area boundaries. This regulation allows consideration of the following criteria: Proximity of largest facilities activity in each county, transportation facilities and commuting patterns, and similarities of the counties in overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

OPM recently completed reviews of the definitions of St. Joseph, Greene, and Lucas Counties, and the municipality of Mayaguez, and is proposing the changes described below. FPRAC, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. These changes would apply on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Lake, IL, NAF FWS Wage Area

St. Joseph County, IN, would be defined as an area of application to the Lake, IL, NAF FWS wage area. The proximity criterion favors the Lake wage area. The transportation facilities and commuting patterns criterion does not favor one wage area more than another. The overall population, employment sizes, and kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. While a standard review of regulatory criteria shows mixed results, the proximity criterion solidly favors the Lake wage area.

With the definition of St. Joseph County to the Lake NAF wage area, the Lake wage area would consist of 1 survey county (Lake County, IL) and 10 area of application counties (Cook, Rock Island, and Vermilion Counties, IL; Johnson County, IA; St. Joseph County, IN; Dickinson and Marquette Counties, MI; and Brown, Dane, and Milwaukee Counties, WI).

Leavenworth-Jackson-Johnson, KS, NAF FWS Wage Area

Greene County, MO, would be defined as an area of application county to the Leavenworth-Jackson-Johnson, KS, NAF FWS wage area. Although the proximity criterion does not favor one wage area more than another, the closest survey area to Greene County is the Leavenworth-Jackson-Johnson wage area. The transportation facilities and commuting patterns criterion does not favor one wage area more than another. The overall population, employment sizes, and kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. Based on this analysis, we recommend that Greene County be defined to the Leavenworth-Jackson-Johnson wage area.

With the definition of Greene County to the Leavenworth-Jackson-Johnson NAF wage area, the Leavenworth-Jackson-Johnson wage area would consist of three survey counties (Leavenworth County, KS; and Jackson and Johnson Counties, MO) and five area of application counties (Shawnee County, KS; and Boone, Camden, Cass, and Greene Counties, MO).

Macomb, MI, NAF FWS Wage Area

Lucas County, OH, would be defined as an area of application county to the Macomb, MI, NAF FWS wage area. The proximity criterion favors the Macomb wage area. The transportation facilities and commuting patterns criterion does not favor one wage area more than another. The overall population, employment sizes, and kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. While a standard review of regulatory criteria shows mixed results, the proximity criterion solidly favors the Macomb wage area.

With the definition of Lucas County to the Macomb NAF wage area, the Macomb wage area would consist of 1 survey county (Macomb County, MI) and 14 area of application counties (Alpena, Calhoun, Crawford, Grand Traverse, Huron, Iosco, Kent, Leelanau, Ottawa, Saginaw, Washtenaw, and Wayne, MI; and Lucas and Ottawa Counties, OH).

Guaynabo-San Juan, PR, NAF FWS Wage Area

The municipality of Mayaguez, PR, would be defined as an area of application county to the Guaynabo-San Juan, PR, NAF FWS wage area. The Guaynabo-San Juan wage area is the only NAF wage area in Puerto Rico. VCS #373 in the Mayaguez Outpatient Clinic is located approximately 92 miles from Fort Buchanan, the wage area's host activity.

The municipalities of Ceiba, Isabela, Toa Baja, and Vieques, PR, and the U.S. Virgin Islands of St. Croix and St. Thomas would be removed from the area of application of the Guaynabo-San Juan wage area. No NAF FWS employment has been reported in the municipalities of Ceiba, Isabela, Toa Baja, and Vieques since 2009 nor in the U.S. Virgin Islands of St. Croix and St. Thomas since the closure of Army and Air Force Exchange Service (AAFES) stores in 2012 and 2015, respectively. NAF employers have no plans to establish activities in these locations in the future. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.'' Therefore, the municipalities of Ceiba, Isabela, Toa Baja, and Vieques and the U.S. Virgin Islands of St. Croix and St. Thomas should not be defined as part of an NAF wage area.

With the definition of the municipality of Mayaguez to the Guaynabo-San Juan NAF wage area and the removal of the municipalities of Ceiba, Isabela, Toa Baja, and Vieques and the U.S. Virgin Islands of St. Croix and St. Thomas from the Guaynabo-San Juan NAF wage area, the Guaynabo-San Juan wage area would consist of two survey municipalities (Guaynabo and San Juan) and five area of application municipalities (Aguadilla, Bayamon, Mayaguez, Ponce, and Salinas).

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011)

Reducing Regulation and Controlling Regulatory Costs

This proposed rule is not expected to be subject to the requirements of E.O. 13771 because this proposed rule is not significant under E.O. 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix D to Subpart B is amended by revising the wage area listing for the Lake, IL; Leavenworth-Jackson-Johnson, KS; Macomb, MI; and Guaynabo-San Juan, PR, wage areas to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

ILLINOIS

Lake

Survey Area

Illinois:
  Lake

Area of Application. Survey area plus:

Illinois:
  Cook
  Rock Island
  Vermilion
Indiana:
  St. Joseph
Iowa:
  Johnson
Michigan:
  Dickinson
  Marquette
Wisconsin:

Brown
Dane
Milwaukee

* * * * *

KANSAS
Leavenworth-Jackson-Johnson
Survey Area

Kansas:
Leavenworth
Missouri:
Jackson
Johnson
Area of Application. Survey area plus:
Kansas:
Shawnee
Missouri:
Boone
Camden
Cass
Greene

* * * * *

MICHIGAN
Macomb
Survey Area

Michigan:
Macomb
Area of Application. Survey area plus:
Michigan:
Alpena
Calhoun
Crawford
Grand Traverse
Huron
Iosco
Kent
Leelanau
Ottawa
Saginaw
Washtenaw
Wayne
Ohio:
Lucas
Ottawa

* * * * *

PUERTO RICO
Guaynabo-San Juan
Survey Area

Puerto Rico:
Guaynabo
San Juan
Area of Application. Survey area plus:
Puerto Rico:
Aguadilla
Bayamon
Mayaguez
Ponce
Salinas

* * * * *
* *

[FR Doc. 2019–11940 Filed 6–7–19; 8:45 am]

BILLING CODE 6325–39–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1650 and 1651

Additional Withdrawal Options

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Federal Retirement Thrift Investment Board (''FRTIB'') is proposing to amend its regulations to provide TSP participants with additional withdrawal options and flexibility, effective September 15, 2019.

DATES: Comments must be received on or before August 9, 2019.

ADDRESSES: You may send comments, identified by Docket ID number FRTIB–2019–0003, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 942–1676.
- *Mail or Hand Deliver/Courier:* Office of General Counsel, Attn: Megan G. Grumbine, Federal Retirement Thrift Investment Board, 77 K Street NE, Suite 1000, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Austen Townsend, (202) 864–8647.

SUPPLEMENTARY INFORMATION: The FRTIB administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On November 17, 2017, the President signed the TSP Modernization Act of 2017 (the ''Act''), Public Law 115–84 (131 Stat. 1272). The Act permits the TSP to offer participants additional withdrawal options and flexibility and eliminates the requirement that a TSP participant who has reached age 70½ and is separated from federal service make a full withdrawal election with respect to his or her TSP account. Although the Act does not require that implementation of these changes become effective until November 17, 2019, the FRTIB is proposing an effective date of September 15, 2019.

The FRTIB recognizes the importance of providing TSP participants with more flexibility to access the money in their accounts when they need it. Equally important is the need to ensure that participants have the money they need to provide sufficient income during retirement. When proposing the changes herein, the FRTIB was mindful to balance these potentially competing interests.

Post-Separation Withdrawals

Unlimited Partial Post-Separation Withdrawals

Currently, a TSP participant is limited to one partial post-separation withdrawal per account, unless he or she previously took an age-based, in-service withdrawal from that account. A participant who has previously taken an age-based, in-service withdrawal may not take a partial post-separation withdrawal.

As required by the Act, the FRTIB is proposing to eliminate the restriction on partial post-separation withdrawals for participants who have taken age-based, in-service withdrawals. Further, in light of the elimination of the full withdrawal requirement discussed in more detail below, the FRTIB proposes to allow all separated participants to take as many partial post-separation withdrawals as desired. In order to avoid inadvertently processing duplicate withdrawal requests, the only limitation on this flexibility is that only one post-separation withdrawal request will be processed during any 30-calendar-day period. A TSP participant with more than one account must make separate post-separation withdrawal requests for each account and the 30-calendar-day period will apply separately to each account.

A participant will be able to elect to receive any partial post-separation withdrawal in the form of a single sum payment, installment payments, a life annuity, or any combination of these options. However, a participant may only have one installment payment series in place per account at any given time.

Additional Installment Payment Options

Currently, a separated TSP participant may elect to receive all or a portion of his or her account balance in the form of fixed dollar monthly payments or monthly payments calculated based on life expectancy. TSP participants are permitted to change the amount of monthly payments (including a one-time election to change from monthly payments calculated based on life expectancy to fixed dollar monthly payments) during an annual open

season between October 1 and December 15.

The FRTIB proposes to make the following changes to its existing installment payment options. First, TSP participants will be permitted to elect to receive installment payments on an annual or quarterly basis, as well as on a monthly basis.

Second, a TSP participant may change the amount and frequency of his or her installment payments at any time throughout the year. This includes the ability of a participant to make a one-time election to change from installment payments calculated based on life expectancy to fixed dollar installment payments. As is currently the case, once a participant makes an election to receive fixed dollar installment payments, he or she may not switch to life-expectancy-based installment payments.

Third, under the new rules, a TSP participant receiving installment payments may stop these payments at any time without receiving the remainder of his or her account in a final withdrawal.

Finally, a TSP participant receiving installment payments may elect to receive some or all of his or her remaining account balance in the form of a single sum payment, an annuity, or a combination of these options.

Traditional, Roth, or Pro Rata

Under existing rules, all post-separation withdrawals are taken from a participant's traditional and Roth balances on a pro rata basis. Under the proposed rules, a participant would still be permitted to use this method, but would also have the option to take his or her withdrawal only from the Roth balance or only from the traditional balance. If a participant elects to receive installment payments from either his or her Roth balance only or traditional balance only, payments will automatically continue from the non-elected balance once the elected balance has been depleted unless the participant elects to stop or change installment payments.

Spousal Rights

The FRTIB is proposing to update its rules to clarify how spousal rights will apply in light of the new post-separation withdrawal options. Specifically, spousal consent, in the case of a married Federal Employees' Retirement System (FERS) or uniformed services participant, or spousal notification, in the case of a married Civil Service Retirement System (CSRS) participant, is generally required every time a married participant makes a post-separation withdrawal election in any form other than a joint life annuity with a 50 percent survivor benefit, level payments, and no cash refund. In addition, spousal consent or notification, as appropriate, is required when a married participant elects to change the amount or frequency of his or her installment payments.

In-Service Withdrawals

Age-Based, In-Service Withdrawals

Currently, a TSP participant who is 59½ or older and not separated from federal service may make a one-time election to receive all or part of his account balance in a single sum payment. The FRTIB is proposing to permit participants to take up to four age-based, in-service withdrawals per calendar year. The 30-calendar-day processing period applicable to partial post-separation withdrawals will also apply. For participants with more than one TSP account, these limits apply separately to each account.

Hardship Withdrawals

Currently when a participant takes a hardship withdrawal, his or her TSP contributions are suspended for a period of six months after the withdrawal is processed. After the expiration of the six-month period, the participant may restart contributions by submitting a new TSP contribution election. Contributions are not restarted automatically.

Under the proposed rule, any six-month suspension period in effect will automatically expire on September 15, 2019 and affected participants may restart contributions by submitting a new TSP contribution election. In addition, a participant who takes a hardship withdrawals on or after September 15, 2019 will not have his or her TSP contributions suspended.

Traditional, Roth, or Pro Rata

Under existing rules, all in-service withdrawals are taken from a participant's traditional and Roth balances on a pro rata basis. Under the proposed rules, a participant would still be permitted to use this method, but would also have the option to take his or her withdrawal only from the Roth balance or only from the traditional balance.

Spousal Rights

The FRTIB is proposing to update its rules to clarify how spousal rights will apply in light of the changes to its in-service withdrawal options. Specifically, spousal consent, in the case of a married FERS or uniformed services participant, or spousal notification, in the case of a married CSRS participant, is generally required every time a married participant makes an in-service withdrawal election.

Elimination of Full Withdrawal Election Requirement

Current Rules

Historically, TSP rules required a participant to make an election to begin receiving monthly payments, purchase a life annuity, withdraw his/her account balance in a single payment, or use a combination of these three options (a ''Full Withdrawal Election'') no later than April 1 of the year following the year in which the participant reaches age 70½ and is separated from federal service (the ''Full Withdrawal Deadline''). If a TSP participant failed to make a Full Withdrawal Election by the Full Withdrawal Deadline, the TSP initiated an account abandonment process in the year in which the Full Withdrawal Deadline occurred.

In addition to the TSP's Full Withdrawal Election rules, Internal Revenue Service (''IRS'') rules regarding required minimum distributions (''RMDs'') apply to TSP participants. Under IRS rules, a TSP participant must receive RMDs beginning on April 1 of the year following the year in which the participant reaches age 70½ and is separated from service (the ''Required Beginning Date'') and annually thereafter.

As required by the IRS RMD rules, the TSP distributed the first RMD payment to each participant by his/her Required Beginning Date regardless of whether the participant has made a Full Withdrawal Election. However, because the accounts of participants who failed to make a Full Withdrawal Election by the Full Withdrawal Deadline were abandoned later that same year, the TSP did not (and was not required to) make any additional RMD payments to those participants.

Proposed Changes

Effective January 1, 2019, the FRTIB ceased the abandonment of accounts for participants who have reached age 70½ and separated from federal service but have not made Full Withdrawal Elections by the Full Withdrawal Deadline and is proposing to amend its regulations to reflect this change. Stopping the abandonment process means that participants who otherwise would have had their accounts abandoned in 2019 will no longer be abandoned and will be poised to take advantage of the additional withdrawal options that will be available on September 15, 2019.

As a result of the elimination of the account abandonment process, the FRTIB will automatically distribute IRS RMDs each year to all affected participants, regardless of whether they have made Full Withdrawal Elections.

In addition, the FRTIB is proposing certain non-substantive clarifications to its rules regarding IRS RMDs to beneficiary participants. Beneficiary participants are not subject to the Full Withdrawal Election rules.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the TSP, and beneficiary participants.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, and 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under 2 U.S.C. 1532 is not required.

List of Subjects

Claims, Government employees, Pensions, Retirement.

5 CFR Part 1650

Alimony, Claims, Government employees, Pensions, Retirement.

5 CFR Part 1651

Claims, Government employees, Pensions, Retirement.

Ravindra Deo,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons stated in the preamble, the FRTIB proposes to amend 5 CFR chapter VI as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

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

Authority: 5 U.S.C. 8351, 8432d, 8433, 8434, 8435, 8474(b)(5) and 8474(c)(1).

■ 2. Amend paragraph (b) of § 1650.1 by adding in alphabetical order the definitions of ''Required Beginning Date'', and ''Required Minimum Distribution'' to read as follows:

* * * * *

(b) * * *

Required Beginning Date means April 1 of the year following the year in which the participant reaches 70½ years of age or separates from Government service, whichever is later.

Required Minimum Distribution means the amount required to be distributed to a participant beginning on the required beginning date and every year thereafter pursuant to Internal Revenue Code § 401(a)(9) and the regulations promulgated thereunder, as applicable.

■ 3. Amend § 1650.2 by revising paragraphs (a), (b), (f), (g), and (h) to read as follows:

§ 1650.2 Eligibility and general rules for a TSP withdrawal.

(a) A participant who is separated from Government service can elect to withdraw all or a portion of his or her account balance by one or a combination of the withdrawal methods described in subpart B of this part.

(b) A post-employment withdrawal will not be paid unless TSP records indicate that the participant is separated from Government service. The TSP will, when possible, cancel a pending post-employment withdrawal election upon receiving information from an employing agency that a participant is no longer separated.

* * * * *

(f) A participant can elect to have any portion of a single or installment payment that is not transferred to an eligible employer plan, traditional IRA, or Roth IRA deposited directly, by electronic funds transfer (EFT), into a savings or checking account at a financial institution in the United States.

(g) If a participant has a civilian TSP account and a uniformed services TSP account, the rules in this part apply to each account separately. For example, the participant is eligible to make four age-based in-service withdrawals from the civilian account *and* four age-based in-service withdrawals from the uniformed services account per calendar year. A separate withdrawal request must be made for each account.

(h) A participant may elect to have his or her withdrawal distributed from the participant's traditional balance only, Roth balance only, or pro rata from the participant's traditional and Roth balances. Any distribution from the traditional balance will be prorated between the tax-deferred balance and any tax-exempt balance. Any distribution from the Roth balance will be prorated between contributions in the Roth balance and earnings in the Roth balance. In addition, all withdrawals will be distributed pro rata from all TSP Funds in which the participant's account is invested. All prorated amounts will be based on the balances in each TSP Fund or source of contributions on the day the withdrawal is processed.

■ 4. Amend § 1650.11 by revising paragraphs (a) and (c) and by adding paragraph (d) to read as follows:

§ 1650.11 Withdrawal elections.

(a) Subject to the restrictions in this subpart, participants may elect to withdraw all or a portion of their TSP accounts in a single payment, a series of installment payments, a life annuity, or any combination of these options.

* * * * *

(c) Provided that the participant has not submitted a post-employment withdrawal election prior to the date the automatic payment is processed, if a participant's vested account balance is less than $200 when he or she separates from Government service, the TSP will automatically pay the balance in a single payment to the participant at his or her TSP address of record. The participant will not be eligible for any other payment option or be allowed to remain in the TSP.

(d) Only one post-employment withdrawal election per account will be processed in any 30-calendar-day period.

■ 5. Revise § 1650.12 to read as follows:

§ 1650.12 Single payment.

Provided that, in the case of a partial withdrawal, the amount elected is not less than $1,000, a participant can elect to withdraw all or a portion of his or her account balance in a single payment.

■ 6. Revise § 1650.13 to read as follows:

§ 1650.13 Installment payments.

(a) A participant can elect to withdraw all or a portion of the account balance in a series of substantially equal installment payments, to be paid on a monthly, quarterly, or annual basis in one of the following manners:

(1) *A specific dollar amount.* The amount elected must be at least $25 per installment; if the amount elected is less than $25 per installment, the request will be rejected. Payments will be made in the amount requested each installment period.

(2) *An installment payment amount calculated based on life expectancy.* Payments based on life expectancy are

determined using the factors set forth in the Internal Revenue Service life expectancy tables codified at 26 CFR 1.401(a)(9)–9, Q&A 1 and 2. The installment payment amount is calculated by dividing the account balance by the factor from the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments are to begin. This amount is then divided by the number of installment payments to be made per calendar year to yield the installment payment amount. In subsequent years, the installment payment amount is recalculated each January by dividing the prior December 31 account balance by the factor in the IRS life expectancy tables based upon the participant's age as of his or her birthday in the year payments will be made. There is no minimum amount for an installment payment calculated based on this method.

(b) A participant receiving installment payments calculated based upon life expectancy can make one election, at any time, to change to a fixed dollar installment payment. A participant can change the amount of his or her fixed payments at any time as described in § 1650.17(c). A participant who is receiving installment payments based on a fixed dollar amount, however, cannot elect to change to an amount calculated based on life expectancy.

(c) If a participant elects to receive installments pro rata from his or her traditional and Roth balances, installment payments will be made until the participant's entire account balance is expended, unless the participant elects to change or stop installment payments as described in in § 1650.17(c). If a participant elects to receive installment payments from his or her traditional balance only or Roth balance only, installment payments will automatically continue from the non-elected balance once the elected balance has been expended, unless the participant elects to change or stop installment payments as described in § 1650.17(c).

(d) A participant receiving installment payments, regardless of the calculation method, can elect at any time to receive the remainder or part of his or her account balance in a single payment.

(e) A participant may only have one installment payment series in place at a time.

(f) A participant receiving installment payments may change the investment of his or her account balance among the TSP investment funds as provided in 5 CFR part 1601.

(g) Upon receiving information from an employing agency that a participant receiving installment payments is no longer separated, the TSP will cancel all pending and future installment payments.

■ 7. Amend § 1650.14 by revising paragraphs (a) and (b), removing paragraph (c), re-designating paragraphs (d) through (l) as paragraphs (c) through (k), and revising newly re-designated paragraphs (c), (d), and (h) to read as follows:

§ 1650.14 Annuities.

(a) A participant electing a post-employment withdrawal can use all or a portion of his or her total account balance, traditional balance only, or Roth balance only to purchase a life annuity.

(b) If a participant has a traditional balance and a Roth balance and elects to use all or a portion of his or her total account balance to purchase a life annuity, the TSP must purchase two separate annuity contracts for the participant: One from the portion of the withdrawal distributed from his or her traditional balance and one from the portion of the withdrawal distributed from his or her Roth balance.

(c) A participant cannot elect to purchase an annuity contract with less than $3,500.

(d) Unless an amount must be paid directly to the participant to satisfy any applicable minimum distribution requirement of the Internal Revenue Code, the TSP will purchase the annuity contract(s) from the TSP's annuity vendor using the participant's entire account balance or the portion specified. In the event that a minimum distribution is required by section 401(a)(9) of the Internal Revenue Code before the date of the first annuity payment, the TSP will compute that amount prior to purchasing the annuity contract(s), and pay it directly to the participant.

* * * * *

(h) For each withdrawal election in which the participant elects to purchase an annuity with some or all of the amount withdrawn, if the TSP must purchase two annuity contracts, the type of annuity, the annuity features, and the joint annuitant (if applicable) selected by the participant will apply to both annuities purchased. For each withdrawal election, a participant cannot elect more than one type of annuity by which to receive a withdrawal, or portion thereof, from any one account.

§ 1650.15 [Removed]

■ 8. Remove § 1650.15.

■ 9. Revise § 1650.16 to read as follows:

§ 1650.16 Required minimum distributions.

(a) A separated participant must receive required minimum distributions from his or her account commencing no later than the required beginning date and, for each year thereafter, no later than December 31.

(b) A separated participant may elect to withdraw from his or her account or to begin receiving payments before the required beginning date, but is not required to do so.

(c) In the event that a separated participant does not withdraw from his or her account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP will automatically distribute the necessary amount on or before the applicable date described in paragraph (a) of this section.

(d) The TSP will disburse required minimum distributions described in paragraph (c) of this section pro rata from the participant's traditional balance and the participant's Roth balance.

(e) The rules set forth in paragraphs (a) through (d) of this section shall apply to a separated participant who reclaims an account balance that was declared abandoned.

■ 10. Amend § 1650.17 by revising paragraphs (a) and (c) to read as follows:

§ 1650.17 Changes and cancellation of a withdrawal request.

(a) *Before processing.* A pending withdrawal request can be cancelled if the cancellation is received and can be processed before the TSP processes the withdrawal request. However, the TSP processes withdrawal requests each business day and those that are entered into the record keeping system by 12:00 noon eastern time will ordinarily be processed that night; those entered after 12:00 noon eastern time will be processed the next business day. Consequently, a cancellation request must be received and entered into the system before the cut-off for the day the withdrawal request is submitted for processing in order to be effective to cancel the withdrawal.

* * * * *

(c) *Change in installment payments.* If a participant is receiving a series of installment payments, with appropriate supporting documentation as required by the TSP record keeper, the participant can change at any time: The payment amount or frequency (including stopping installment payments), the address to which the payments are mailed, the amount of federal tax withholding, whether or not a payment will be transferred (if permitted) and the portion to be

transferred, the method by which direct payments to the participant are being sent (EFT or check), the identity of the financial institution to which payments are transferred or sent by EFT, or the identity of the EFT account.

■ 11. Revise § 1650.21 to read as follows:

§ 1650.21 Information provided by employing agency or service.

When a TSP participant separates from Government service, his or her employing agency or service must report the separation and the date of separation to the TSP record keeper. Until the TSP record keeper receives this information from the employing agency or service, it will not pay a post-employment withdrawal.

■ 12. Revise § 1650.23 to read as follows:

§ 1650.23 Accounts of less than $200.

Upon receiving information from the employing agency that a participant has been separated for more than 31 days and that any outstanding loans have been closed, provided the participant has not made a withdrawal election before the distribution is processed, if the account balance is $5.00 or more but less than $200, the TSP record keeper will automatically distribute the entire amount of his or her account balance. The TSP will not pay this amount by EFT. The participant may not elect to leave this amount in the TSP, nor will the TSP transfer any automatically distributed amount to an eligible employer plan, traditional IRA, or Roth IRA. However, the participant may elect to roll over this payment into an eligible employer plan, traditional IRA, or Roth IRA to the extent the roll over is permitted by the Internal Revenue Code.

■ 13. Revise § 1650.24 to read as follows:

§ 1650.24 How to obtain a post-employment withdrawal.

To request a post-employment withdrawal, a participant must use the TSP website to initiate a request or submit to the TSP record keeper a properly completed paper TSP post-employment withdrawal request form.

■ 14. Amend § 1650.25 by revising paragraph (a) to read as follows:

§ 1650.25 Transfers from the TSP.

(a) The TSP will, at the participant's election, transfer all or any portion of an eligible rollover distribution (as defined by section 402(c)(4) of the Internal Revenue Code) directly to an eligible employer plan or an IRA.

* * * * *

■ 15. Amend § 1650.31 by removing paragraph (d) and revising paragraphs (a) and (c) to read as follows:

§ 1650.31 Age-based withdrawals.

(a) A participant who has reached age 59½ and who has not separated from Government service is eligible to withdraw all or a portion of his or her vested TSP account balance in a single payment. Unless the withdrawal request is for the entire vested account balance, the entire vested traditional balance, or the entire vested Roth balance, the amount of an age-based withdrawal request must be at least $1,000.

* * * * *

(c) A participant is permitted four age-based withdrawals per calendar year for an account. Only one age-based withdrawal election per account will be processed in any 30-calendar-day-period.

■ 16. Revise § 1650.33 to read as follows:

§ 1650.33 Contributing to the TSP after an in-service withdrawal.

(a) *Age-Based In-Service Withdrawals.* A participant's TSP contribution election will not be affected by an age-based in-service withdrawal; therefore, his or her TSP contributions will continue without interruption.

(b) *Financial Hardship In-Service Withdrawals.* (1) A participant who obtains a financial hardship in-service withdrawal prior to September 15, 2019, may not contribute to the TSP until the earlier of:

(i) The end of the six-month period after the withdrawal is processed, or

(ii) September 15, 2019.

(2) Therefore, the participant's employing agency will discontinue his or her contributions (and any applicable Agency Matching Contributions) for the applicable period after the agency is notified by the TSP; in the case of a FERS or BRS participant, Agency Automatic (1%) Contributions will continue. A participant whose TSP contributions are discontinued by his or her agency after a financial hardship withdrawal can resume contributions any time after expiration of the applicable period by submitting a new TSP contribution election. Contributions will not resume automatically.

(3) A participant's TSP contribution election will not be affected by a financial hardship in-service withdrawal obtained on or after September 15, 2019; therefore, his or her TSP contributions will continue without interruption.

■ 17. Revise § 1650.41 to read as follows:

§ 1650.41 How to obtain an age-based withdrawal.

To request an age-based withdrawal, a participant must use the TSP website to initiate a request or submit to the TSP record keeper a properly completed paper TSP age-based withdrawal request form.

■ 18. Amend § 1650.42 by revising paragraph (a) to read as follows:

§ 1650.42 How to obtain a hardship withdrawal.

(a) To request a financial hardship withdrawal, a participant must use the TSP website to initiate a request or submit to the TSP record keeper a properly completed paper TSP hardship withdrawal request form.

* * * * *

■ 19. Revise § 1650.61 to read in its entirety as follows:

§ 1650.61 Spousal rights applicable to post-employment withdrawals

(a) The spousal rights described in this section apply to total post-employment withdrawals when the married participant's vested TSP account balance exceeds $3,500, to partial post-employment withdrawals without regard to the amount of the participant's account balance, and to any change in the amount or frequency of an existing installment payment series, including a change from payments calculated based on life expectancy to payments based on a fixed dollar amount.

(b) Unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date the withdrawal request is processed by the TSP, the spouse of a CSRS participant is entitled to notice when the participant applies for a post-employment withdrawal or makes a change to the amount or frequency of an existing installment payment series. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) The spouse of a FERS or uniformed services participant has a right to a joint and survivor annuity with a 50 percent survivor benefit, level payments, and no cash refund based on the participant's entire account balance when the participant elects a total post-employment withdrawal.

(1) The participant may make a different total withdrawal election only if his or her spouse consents to that election and waives the right to this annuity.

(2) A participant's spouse must consent to any partial withdrawal election (other than an election to purchase this type of an annuity with such amount) and waive his or her right to this annuity with respect the amount withdrawn.

(3) A spouse must consent to any change in the amount or frequency of an existing installment payment series and waive his or her right to this annuity with respect to the applicable amount. Spousal consent is not required to stop installment payments.

(4) Unless the TSP granted the participant an exception under this subpart to the spousal notification requirement within 90 days of the date the withdrawal form is processed by the TSP, to show that the spouse has consented to a different total or partial withdrawal election or installment payment change and waived the right to this annuity with respect to the applicable amount, the participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. If the TSP granted the participant an exception to the signature requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form.

(5) The spouse's consent and waiver is irrevocable for the applicable withdrawal or installment payment change once the TSP record keeper has received it.

■ 20. Amend § 1650.62 by revising paragraphs (b) and (c) to read as follows:

§ 1650.62 Spousal rights applicable to in-service withdrawals.

* * * * *

(b) Unless the participant was granted an exception under this subpart to the spousal notification requirement within 90 days of the date on which the withdrawal request is processed by the TSP, the spouse of a CSRS participant is entitled to notice when the participant applies for an in-service withdrawal. If the TSP granted the participant an exception to the notice requirement, the participant should enclose a copy of the TSP's approval letter with the withdrawal form. The participant must provide the TSP record keeper with the spouse's correct address. The TSP record keeper will send the required notice by first class mail to the spouse at the most recent address provided by the participant.

(c) Unless the participant was granted an exception under this subpart to the signature requirement within 90 days of the date the withdrawal form is processed by the TSP, before obtaining an in-service withdrawal, a participant who is covered by FERS or who is a member of the uniformed services must obtain the consent of his or her spouse and waiver of the spouse's right to a joint and survivor annuity described in § 1650.61(c) with respect to the applicable amount. To show the spouse's consent and waiver, a participant must submit to the TSP record keeper a properly completed withdrawal request form, signed by his or her spouse in the presence of a notary. Once a form containing the spouse's consent and waiver has been submitted to the TSP record keeper, the spouse's consent is irrevocable for that withdrawal.

PART 1651—DEATH BENEFITS

■ 21. The authority citation continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8432d, 8432(j), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

■ 22. Amend paragraph (b) of § 1651.1 by adding in alphabetical order the definitions of ''Required Beginning Date'', and ''Required Minimum Distribution'' to read as follows:

■ a. *Required Beginning Date* means

(1) The end of the calendar year immediately following the calendar year in which the participant died, or

(2) The end of the calendar year in which the participant would have attained age 70½, whichever is later.

■ b. *Required Minimum Distribution* means the amount required to be distributed to a beneficiary participant beginning on the required beginning date and every year thereafter pursuant to Internal Revenue Code Section 401(a)(9) and the regulations promulgated thereunder, as applicable.

■ 23. Amend § 1651.19 by revising paragraph (c) to read as follows:

§ 1651.19 Beneficiary participant accounts.

* * * * *

(c) *Required minimum distributions.* (1) A beneficiary participant must receive required minimum distributions from his or her beneficiary participant account commencing no later than the required beginning date and, for each year thereafter, no later than December 31.

(2) A beneficiary participant may elect to withdraw from his or her account or to begin receiving payments before the required beginning date, but is not required to do so.

(3) In the event that a beneficiary participant does not withdraw from his or her beneficiary participant account an amount sufficient to satisfy his or her required minimum distribution for the year, the TSP will automatically distribute the necessary amount on or before the applicable date described in paragraph (1) of this section.

(4) The TSP will disburse required minimum distributions described in paragraph (3) of this section pro rata from the beneficiary participant's traditional balance and the beneficiary participant's Roth balance.

* * * * *

[FR Doc. 2019–11789 Filed 6–7–19; 8:45 am]

BILLING CODE 6760–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

[Docket No. PRM–171–1; NRC–2019–0084]

Nuclear Power Plant License Fees Upon Commencing Commercial Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of docketing and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has received a petition for rulemaking from Michael D. Meier on behalf of Southern Nuclear Operating Company, dated February 28, 2019, requesting that the NRC revise its regulations related to the start of assessment of annual fees for certain nuclear power plants to align with commencement of their commercial operation. The petition was docketed by the NRC on March 21, 2019, and has been assigned Docket No. PRM–171–1. The NRC is examining the issues raised in PRM–171–1 to determine whether they should be considered in rulemaking. The NRC is requesting public comment on this petition at this time.

DATES: Submit comments by July 10, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0084. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Email comments to: Rulemaking.Comments@nrc.gov.* If you

do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

• *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

• *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Victoria Huckabay, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5183; email: *Victoria.Huckabay@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0084 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0084.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0084 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. The Petitioner

The petition was submitted by Michael D. Meier on behalf of Southern Nuclear Operating Company. Michael D. Meier is the Vice President of Regulatory Affairs for Southern Nuclear Operating Company, a nuclear energy facility operator.

III. The Petition

The petitioner is requesting that the NRC revise part 171 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Annual fees for reactor licenses and fuel cycle licenses and materials licenses, including holders of certificates of compliance, registrations, and quality assurance program approvals and government agencies licensed by the NRC.'' Specifically, the petitioner is requesting that the NRC revise the timing of when annual license fees for holders of a combined license under 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power plants,'' commence, to coincide with a licensee's commercial operation, rather than upon a 10 CFR 52.103(g) finding. The petition may be found in ADAMS under Accession No. ML19081A015.

IV. Discussion of the Petition

The petitioner requests that the NRC change the start date of assessment of annual fees for combined license holders under part 52 to align with the date when a reactor is declared available for commercial operation, instead of the current requirement in 10 CFR 171.15(a) to commence at the date when the Commission has made the finding under § 52.103(g) that all inspections, tests, analyses, and acceptance criteria are met. The petitioner observes that a startup period of time is required, after the licensee receives NRC's authorization to operate, to complete the remaining tasks necessary to operate the power reactor commercially. The petitioner asserts that at the time of a 10 CFR 52.103(g) finding, the power reactor has not yet been loaded with fuel, undergone startup testing, power ascension, commissioning, or other actions necessary to reliably generate energy for the production of revenue. The petitioner states that (1) a licensee may not complete these startup activities and achieve commercial operation until several months after the § 52.103(g) finding is made, and (2) the licensee should not be subject to the annual fee required under § 171.15, ''Annual fees: Reactor licenses and independent spent fuel storage licenses,'' until the nuclear power plant receives financial benefit from commercial operation beyond minimal amounts of revenue derived from test energy. The petitioner also raises an issue regarding the fairness of charging an annual license fee before commercial operations commence.

V. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for docketing a petition for rulemaking under 10 CFR 2.803. The NRC is examining the issues raised in PRM–171–1 to determine whether they should be considered in rulemaking.

Dated at Rockville, Maryland, this 4th day of June, 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2019–12082 Filed 6–7–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0842; Product Identifier 2018–CE–025–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Limited Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of the comment period.

SUMMARY: We are revising an earlier proposal to supersede Airworthiness Directive (AD) AD 2018–04–09 for Pacific Aerospace Limited Model 750XL airplanes. This proposed airworthiness directive (AD) results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and address an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrectly marked and annunciated low oil-pressure indication warnings. This SNPRM changes the title of one of the flight manuals to be revised, so that the revision requirement applies to all operators, regardless of the issue of their flight manual. Since these actions may impose an additional burden over those in the notice of proposed rulemaking (NPRM), we are reopening the comment period to allow the public the opportunity to comment on these changes.

DATES: We must receive comments on this proposed AD by July 25, 2019.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: *pacific@aerospace.co.nz;* internet: *www.aerospace.co.nz.* You may view this referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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–2017–0867; 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (telephone (800) 647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–0842; Product Identifier 2018–CE–025–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We issued an NPRM to amend 14 CFR part 39 by adding an AD that would remove AD 2018–04–09, Amendment 39–19205 (83 FR 9793, March 8, 2018) (''AD 2018–04–09'') and add a new AD. AD 2018–04–09 addresses an unsafe condition on Pacific Aerospace Limited Model 750XL airplanes and was based on an MCAI originated by the Civil Aviation Authority (CAA), which is the aviation authority for New Zealand.

The NPRM was published in the **Federal Register** on October 23, 2018 (83 FR 53409). The NPRM proposed to require revising the Airplane Flight Manual (AFM) (pilot's operating handbook (POH)) with updated provisions and clarify that the procedure to modify the oil pressure/temperature indicator may be performed as an option to replacing the indicator. The NPRM was based on the CAA's revision its previous MCAI, CAA AD DCA/750XL/19A, dated April 26, 2018 (referred to after this as ''the MCAI''), to mandate the AFM (POH) revisions and also to include an option to modify the oil pressure/temperature indicator.

After we issued the NPRM, we discovered an error in the title of one of the flight manuals to be revised. The NPRM proposed a requirement for airplanes with Pacific Aerospace Pilot's Operating Handbook and Civil Aviation Authority of New Zealand Approved Flight Manual AIR 3237, Issue 2. This SNPRM proposes to change the title, eliminating the issue level, so that the revision requirement applies to all operators, regardless of the issue of their flight manual. Because this change expands the number of operators who would be required to comply with this requirement, the FAA is reopening the comment period to provide additional opportunity for public comment. This SNPRM also includes other editorial changes that do not affect the required actions.

Related Service Information Under 1 CFR Part 51

We reviewed Pacific Aerospace Temporary Revision Instruction Letter, dated October 2017, which includes Pacific Aerospace Temporary Revisions XL/POH/00/001, XL/POH/02/001, and XL/POH/03/001; and Pacific Aerospace Revision Instruction Letter, dated March 2018, which includes Pacific Aerospace POH AIR 3237 Revision, dated March 30, 2018, for 750XL airplanes. For the applicable configurations, the service information includes revisions to the AFM that corrects the incorrect instrument markings.

We also reviewed Pacific Aerospace Mandatory Service Bulletin PACSB/XL/088, dated August 11, 2017, which was previously approved for incorporation by reference on April 12, 2018 (83 FR 9793, March 8, 2018), and describes procedures for replacement or modification of the low oil-pressure light, pressure switch, and indicator. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe

condition exists and is likely to exist or develop on other products of the same type design.

The change described above expands the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on the proposed AD.

Costs of Compliance

We estimate that this SNPRM will affect 22 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $500 per product.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $14,740, or $670 per product.

Since this supplemental NPRM requires the same actions as AD 2018–04–09, the costs of compliance remains the same and does not impose any additional costs on U.S. operators.

There has been no change in the Cost of Compliance section in this supplemental NPRM.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2018–04–09, Amendment 39–19205 (83 FR 9793, March 8, 2018) and adding the following new AD:

Pacific Aerospace Limited: Docket No. FAA–2018–0842; Product Identifier 2018–CE–025–AD.

(a) Comments Due Date

We must receive comments by July 25, 2019.

(b) Affected ADs

This AD replaces AD 2018–04–09, Amendment 39–19205 (83 FR 9793, March 8, 2018) (''AD 2018–04–09'').

(c) Applicability

This AD applies to Pacific Aerospace Limited Model 750XL airplanes, all serial numbers up to 217, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as incorrectly marked and annunciated low oil-pressure indication warnings. We are issuing this AD to prevent engine oil pressure from dropping below safe limits, which could cause possible engine damage or failure.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (4) of this AD, as applicable:

(1) *For airplanes with Pacific Aerospace Pilot's Operating Handbook and Civil Aviation Authority of New Zealand Approved Flight Manual AIR 2825 (AIR 2825):* Within the next 30 days after July 15, 2019 (the effective date of this AD), insert Pacific Aerospace Temporary Revisions XL/POH/00/001, XL/POH/02/001 and XL/POH/03/001 into the Pacific Aerospace Limited (PAL) 750XL AIR 2825 Airplane Flight Manual as specified in Pacific Aerospace Temporary Revision Instruction Letter, dated October 2017.

(2) *For airplanes with Pacific Aerospace Pilot's Operating Handbook and Civil Aviation Authority of New Zealand Approved Flight Manual AIR 3237 (AIR 3237):* Within the next 30 days after July 15, 2019 (the effective date of this AD), insert the Revision dated March 30, 2018, into the PAL 750XL AIR 3237 Airplane Flight Manual as specified in Pacific Aerospace Revision Instruction Letter, dated March 30, 2018.

(3) *For Pacific Aerospace 750XL airplanes up to serial number 217:* Within the next 100 hours time-in-service (TIS) after April 12, 2018 (the effective date of AD 2018–04–09) or within the next 12 months after April 12, 2018 (the effective date of AD 2018–04–09), whichever occurs first, replace or modify the pressure switch for the low oil pressure light by following the Part A—Accomplishment Instructions of PAL Mandatory Service Bulletin (MSB) PACSB/XL/088, dated August 11, 2017.

(4) *For Pacific Aerospace 750XL airplanes up to serial number 217 with a part number (P/N) INS 60–8 oil pressure/temperature indicator installed:* Within the next 100 hours TIS after April 12, 2018 (the effective date of AD 2018–04–09) or within the next 12 months after April 12, 2018 (the effective date of AD 2018–04–09), whichever occurs first, replace the oil pressure/temperature indicator with P/N INS 60–15 by following the Part B—Accomplishment Instructions of PAL MSB PACSB/XL/088, paragraphs 1) through 6), dated August 11, 2017.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs

for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

Refer to CAA MCAI AD No. DCA/750XL/19A, dated April 26, 2018, for related information. You may examine the MCAI on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0842. Pacific Aerospace Limited, Airport Road, Hamilton, Private Bag 3027, Hamilton 3240, New Zealand; telephone: +64 7 843 6144; facsimile: +64 7 843 6134; email: *pacific@aerospace.co.nz;* Internet: *www.aerospace.co.nz.* You may review copies of the referenced service information at the FAA, Policy and Innovation Division, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on May 29, 2019.

Melvin J. Johnson,

Deputy Director, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–11751 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0326; Product Identifier 2018–NM–166–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by significant changes made to the airworthiness limitations (AWLs) related to fuel tank ignition prevention and the nitrogen generation system. This AD would require revising the existing maintenance or inspection program, as applicable, to include new or revised AWLs. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by July 25, 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 service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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–2019–0326; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeffrey Rothman, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3558; email: *jeffrey.rothman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0326; Product Identifier 2018–NM–166–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a final rule titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, that rule included Amendment 21–78, which established Special Federal Aviation Regulation No. 88 (''SFAR 88'') at 14 CFR part 21. Subsequently, SFAR 88 was amended by Amendment 21–82 (67 FR 57490, September 10, 2002; corrected at 67 FR 70809, November 26, 2002) and Amendment 21–83 (67 FR 72830, December 9, 2002; corrected at 68 FR 37735, June 25, 2003, to change ''21–82'' to ''21–83'').

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the final rule published on May 7, 2001, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

We have determined that accomplishing the revision required by paragraph (g) of this proposed AD would terminate the following requirements for that airplane.

- All requirements of AD 2008–10–09 R1, Amendment 39–16148 (74 FR 69264, December 31, 2009).
- The revision required by paragraph (l) of AD 2011–12–09, Amendment 39–16716 (76 FR 33988, June 10, 2011).
- The revision required by paragraph (h) of AD 2013–13–15, Amendment 39–17503 (78 FR 42415, July 16, 2013).
- The revision required by paragraph (j) of AD 2013–25–05, Amendment 39–17701 (78 FR 78701, December 27, 2013).
- The revisions required by paragraphs (l) and (n) of AD 2016–18–16, Amendment 39–18647 (81 FR 65864, September 26, 2016).
- The revision required by paragraph (h) of AD 2017–17–09, Amendment 39–18999 (82 FR 40477, August 25, 2017).

Related Service Information Under 1 CFR Part 51

We reviewed Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019. This service information describes airworthiness limitations that include Airworthiness Limitation Instructions (ALI) and Critical Design Configuration Control Limitations (CDCCL) tasks related to fuel tank ignition prevention and the nitrogen generation system. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or revised AWLs.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and CDCCLs. Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k) of this proposed AD.

Differences Between This Proposed AD and the Service Information

Paragraph (g) of this proposed AD would require operators to revise their maintenance or inspection program by incorporating, amongst other tasks, AWL No. 28–AWL–05, ''Wire Separation Requirements for New Wiring Installed in Proximity to Wiring that Goes Into the Fuel Tanks,'' in Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019. Paragraph (h) of this proposed AD would allow certain changes to be made to the wire type and sleeving requirements specified in AWL No. 28–AWL–05 as an option.

Costs of Compliance

We estimate that this proposed AD affects 381 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2019–0326; Product Identifier 2018–NM–166–AD.

(a) Comments Due Date

We must receive comments by July 25, 2019.

(b) Affected ADs

This AD affects the ADs specified in paragraphs (b)(1) through (b)(6) of this AD.

(1) AD 2008–10–09 R1, Amendment 39–16148 (74 FR 69264, December 31, 2009) (''AD 2008–10–09 R1'').

(2) AD 2011–12–09, Amendment 39–16716 (76 FR 33988, June 10, 2011) (''AD 2011–12–09'').

(3) AD 2013–13–15, Amendment 39–17503 (78 FR 42415, July 16, 2013) (''AD 2013–13–15'').

(4) AD 2013–25–05, Amendment 39–17701 (78 FR 78701, December 27, 2013) (''AD 2013–25–05'').

(5) AD 2016–18–16, Amendment 39–18647 (81 FR 65864, September 26, 2016) (''AD 2016–18–16'').

(6) AD 2017–17–09, Amendment 39–18999 (82 FR 40477, August 25, 2017) (''AD 2017–17–09'').

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel; 47, Nitrogen Generation System.

(e) Unsafe Condition

This AD was prompted by a determination that new or revised airworthiness limitations (AWLs) are necessary. We are issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

(1) For The Boeing Company Model 737–100, –200, and –200C series airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section C, including Subsections C.1, C.2, and C.3 of Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019, except as provided in paragraph (h) of this AD. The initial compliance time for the airworthiness limitation instructions (ALI) tasks are within the applicable compliance times specified in paragraphs (g)(1)(i) through (g)(1)(x) of this AD.

(i) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, or within 12 months after the effective date of this AD if no initial inspection has been performed.

(ii) For AWL No. 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': Within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1178, or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03, whichever is later.

(iii) For AWL No. 28–AWL–21, ''Center Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1228, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–21, whichever is later.

(iv) For AWL No. 28–AWL–22, ''Auxiliary Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1228, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–22, whichever is later.

(v) For AWL No. 28–AWL–23, ''Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1212, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is later.

(vi) For AWL No. 28–AWL–24, ''Center Tank Fuel Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

(vii) For AWL No. 28–AWL–25, ''Auxiliary Fuel Tank Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–25, whichever is later.

(viii) For AWL No. 28–AWL–29, ''AC Fuel Boost Pump Installation'': Within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–29, or within 12 months after the effective date of this AD if no inspection has been performed in the last 72 months.

(ix) For AWL No. 47–AWL–04, ''Nitrogen Generation System (NGS)—Thermal Switch'': Within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04; whichever is latest.

(x) For AWL No. 47–AWL–05, ''Nitrogen Generation System (NGS)—Nitrogen Enriched Air (NEA) Distribution Ducting Integrity'': Within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 14,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–05; whichever is latest.

(2) For The Boeing Company Model 737–300, –400, and –500 series airplanes: Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Section C, including Subsections C.1, C.2, and C.3 of Boeing 737–100/200/200C/300/400/500 Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D6–38278–CMR, dated March 2019; except as provided in paragraph (h) of this AD. The initial compliance time for the ALI tasks are within the applicable compliance times specified in paragraphs (g)(2)(i) through (g)(2)(xi) of this AD.

(i) For AWL No. 28–AWL–01, ''External Wires Over Center Fuel Tank'': Within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–01, or within 12 months after the effective date of this AD if no initial inspection has been performed.

(ii) For AWL No. 28–AWL–03, ''Fuel Quantity Indicating System (FQIS)—Out Tank Wiring Lightning Shield to Ground Termination'': Within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1175; within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1183; within 120 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1186; or within 120 months after the most recent inspection was performed as specified in AWL No. 28–AWL–03; whichever is latest.

(iii) For AWL No. 28–AWL–20, ''Center Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in

Boeing Service Bulletin 737–28A1216, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–20, whichever is later.

(iv) For AWL No. 28–AWL–21, ''Auxiliary Tank Fuel Boost Pump Automatic Shutoff System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1216, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–21, whichever is later.

(v) For AWL No. 28–AWL–22, ''Over-Current and Arcing Protection Electrical Design Features Operation—Boost Pump Ground Fault Interrupter (GFI)'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1212, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–22, whichever is later.

(vi) For AWL No. 28–AWL–23, ''Center Tank Fuel Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–23, whichever is later.

(vii) For AWL No. 28–AWL–24, ''Auxiliary Fuel Tank Boost Pump Power Failed On Protection System'': Within 12 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1227, or within 12 months after the most recent inspection was performed as specified in AWL No. 28–AWL–24, whichever is later.

(viii) For AWL No. 28–AWL–27, ''AC Fuel Boost Pump Installation'': Within 72 months after the most recent inspection was performed as specified in AWL No. 28–AWL–27, or within 12 months after the effective date of this AD if no inspection has been performed in the last 72 months.

(ix) For AWL No. 28–AWL–31, ''Cushion Clamps and Teflon Sleeving Installed on Out-of-Tank Wire Bundles Installed on Brackets that are Mounted Directly on the Fuel Tanks'': Within 144 months after accomplishment of the actions specified in Boeing Service Bulletin 737–28A1228.

(x) For AWL No. 47–AWL–04, ''Nitrogen Generation System (NGS)—Thermal Switch'': Within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 22,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 22,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–04; whichever is latest.

(xi) For AWL No. 47–AWL–05, ''Nitrogen Generation System (NGS)—Nitrogen Enriched Air (NEA) Distribution Ducting Integrity'': Within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1005; within 14,500 flight hours after accomplishment of the actions specified in Boeing Service Bulletin 737–47–1008; or within 14,500 flight hours after the most recent inspection was performed as specified in AWL No. 47–AWL–05; whichever is latest.

(h) Additional Acceptable Wire Types and Sleeving

As an option, when accomplishing the actions required by paragraph (g) of this AD, the changes specified in paragraphs (h)(1) and (h)(2) of this AD are acceptable.

(1) Where AWL No. 28–AWL–05 identifies wire types BMS 13–48, BMS 13–58, and BMS 13–60, the following wire types are acceptable: MIL–W–22759/16, SAE AS22759/16 (M22759/16), MIL–W–22759/32, SAE AS22759/32 (M22759/32), MIL–W–22759/34, SAE AS22759/34 (M22759/34), MIL–W–22759/41, SAE AS22759/41 (M22759/41), MIL–W–22759/86, SAE AS22759/86 (M22759/86), MIL–W–22759/87, SAE AS22759/87 (M22759/87), MIL–W–22759/92, and SAE AS22759/92 (M22759/92); and MIL–C–27500 and NEMA WC 27500 cables constructed from these military or SAE specification wire types, as applicable.

(2) Where AWL No. 28–AWL–05 identifies TFE–2X Standard wall for wire sleeving, the following sleeving materials are acceptable: Roundit 2000NX and Varglas Type HO, HP, or HM.

(i) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

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

(j) Terminating Actions for Certain AD Requirements

Accomplishment of the revision required by paragraph (g) of this AD terminates the requirements specified in paragraphs (j)(1) through (j)(6) of this AD for that airplane:

(1) All requirements of AD 2008–10–09 R1.

(2) The revision required by paragraph (l) of AD 2011–12–09.

(3) The revision required by paragraph (h) of AD 2013–13–15.

(4) The revision required by paragraph (j) of AD 2013–25–05.

(5) The revisions required by paragraphs (l) and (n) of AD 2016–18–16.

(6) The revision required by paragraph (h) of AD 2017–17–09.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

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

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

(l) Related Information

(1) For more information about this AD, contact Jeffrey Rothman, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3558; email: *jeffrey.rothman@faa.gov.*

(2) For information about AMOCs, contact Serj Harutunian, Aerospace Engineer, Propulsion Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5254; fax: 562–627–5210; email: *serj.harutunian@faa.gov.*

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; phone: 562–797–1717; internet: *https://www.myboeingfleet.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 20, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–11925 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0402; Product Identifier 2019–NM–008–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 supersede Airworthiness Directive (AD) 2005–17–14, which applies to all Airbus SAS Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–

605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. AD 2005–17–14 requires repetitive tests to detect desynchronization of the rudder servo actuators, and adjustment or replacement of the spring rods of the rudder servo actuators, if necessary. AD 2005–17–14 also requires repetitive tests/inspections/analyses of the rudder servo actuators, and related investigative/corrective actions if necessary. Since we issued AD 2005–17–14, analyses of the inspection results indicated that the assumptions made to establish the survey campaign were not adequate, and a new investigation determined the existing inspection procedures and compliance times do not adequately address the unsafe condition. This proposed AD would retain some requirements of AD 2005–17–14 and revise the inspection procedures and compliance times, 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 July 25, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, 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 the 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–2019–0402; 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 listed above. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

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–2019–0402; Product Identifier 2019–NM–008–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

We issued AD 2005–17–14, Amendment 39–14235 (70 FR 50157, August 26, 2005) (''AD 2005–17–14''), for all Airbus SAS Model A300 series airplanes, Model A300–600 series airplanes, and Model A310 series airplanes. AD 2005–17–14 requires repetitive tests to detect desynchronization of the rudder servo actuators, and adjustment or replacement of the spring rods of the rudder servo actuators, if necessary; and repetitive tests, inspections, and analyses of the rudder servo actuators, and related investigative and corrective actions if necessary. AD 2005–17–14 resulted from new reports of desynchronization of the rudder servo actuators. We issued AD 2005–17–14 to address desynchronization of one of the three rudder servo actuators, which, if combined with an engine failure, could result in the loss of the related hydraulic system and could cause the loss of one of the two synchronized actuators. This condition could create additional fatigue loading and possible cracking of the attachment fittings and could result in the inability of the remaining synchronized actuator to maintain the commanded rudder deflection, leading to reduced controllability of the airplane.

Actions Since AD 2005–17–14 Was Issued

Since we issued AD 2005–17–14, EASA reported that analyses of the inspection results indicate that the assumptions made in 2004 to establish the survey campaign were not adequate. This determination led to investigation and revision of the service information with revised inspection instructions and compliance times, depending on airplane configuration.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0017, dated January 29, 2019 (''EASA AD 2019–0017'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A300 series airplanes, Model A300–600 series airplanes, and Model A310 series airplanes. The MCAI states:

> Numerous occurrences were reported of rudder servo control de-synchronization, some of which had caused structural damages to the fin or side fittings of the rudder actuator attachments. Analyses revealed that a de-synchronization of the rudder servo control induced by misalignment of the three servo controls, or by thermal expansion, can provoke opposing loads.
>
> This condition, if not detected and corrected, could induce failure of rudder-associated systems, possibly resulting in reduced control of the aeroplane.
>
> Previously, DGAC [Direction Générale de l'Aviation Civile] France issued AD F–2004–063 for A300–600ST aeroplanes, and AD F–2004–092 (EASA approval 2004–6368) [which corresponds to FAA AD 2005–17–14] for A300, A310 and A300–600 aeroplanes, to require repetitive inspections of rudder servo controls, fin box and rudder structures, and, depending on findings, accomplishment of applicable corrective action(s).
>
> Since those ADs were issued, analyses of the inspection results indicate that the assumptions made in 2004 to establish the survey campaign were not adequate. This determination induced new investigation and ATA 55 SBs [service bulletins] revision with new inspection instructions and new

compliance times, depending on aeroplane configuration.

For the reason described above, this [EASA] AD retains partially the requirements of DGAC France AD F–2004–063 and AD F–2004–092 (EASA approval 2004–6368), which are superseded, and requires the new inspections (latest SB revision) at new intervals.

The new repetitive intervals for the inspections specified in paragraph (2) of EASA AD 2019–0017 range from 300 flight cycles to 6,000 flight cycles, depending on inspection type.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2005–17–14, this proposed AD would retain certain requirements of AD 2005–17–14. Those requirements are referenced in EASA AD 2019–0017, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0017 describes procedures for repetitive inspections of the rudder servo actuators and related investigative/corrective actions. Related investigative actions include repetitive inspections of fin box and rudder servo controls. Corrective actions include repair. 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.

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 2019–0017 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD and except as discussed under ''Differences Between this Proposed AD and the MCAI.''

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 2019–0017 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0017, except for any differences identified as exceptions in the regulatory text of this proposed AD. Service information specified in EASA AD 2019–0017 that is required for compliance with EASA AD 2019–0017 will be available on the internet *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0402 after the FAA final rule is published.

Differences Between This Proposed AD and the MCAI

Where paragraph (4) of EASA AD 2019–0017 refers to ''during any inspection as required by paragraph (2) of this AD,'' this proposed AD would require using ''during any inspection as required by paragraph (2) or (3) of this AD.'' EASA AD 2019–0017 did not specify a corrective action for the inspections required by paragraph (3) of EASA AD 2019–0017.

Costs of Compliance

We estimate that this proposed AD affects 133 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2005–17–14	1 work-hour × $85 per hour = $85	$0	$85	$11,305
New proposed actions	2 work-hours × $85 per hour = $85	0	170	22,610

* Table does not include estimated costs for reporting.

We estimate that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $11,305, or $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
34 work-hours × $85 per hour = $2,890	$0	$2,890

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

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this NPRM is 2120–0056. The paperwork cost associated with this NPRM has been detailed in the Costs of

Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this NPRM is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

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

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

This 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 removing Airworthiness Directive (AD) 2005–17–14, Amendment 39–14235 (70 FR 50157, August 26, 2005), and adding the following new AD:

Airbus SAS: Docket No. FAA–2019–0402; Product Identifier 2019–NM–008–AD.

(a) Comments Due Date

We must receive comments by July 25, 2019.

(b) Affected ADs

This AD replaces AD 2005–17–14, Amendment 39–14235 (70 FR 50157, August 26, 2005) (''AD 2005–17–14'').

(c) Applicability

This AD applies to the Airbus SAS airplanes, certificated in any category, specified in paragraphs (c)(1) through (c)(3) of this AD, as identified in European Aviation Safety Agency (EASA) AD 2019–0017, dated January 29, 2019 (''EASA AD 2019–0017'').

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes.

(3) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls; 55, Stabilizers.

(e) Reason

This AD was prompted by reports of desynchronization of the rudder servo actuators. We are issuing this AD to address desynchronization of one of the three rudder servo actuators, which, if combined with an engine failure, could result in the loss of the related hydraulic system and could cause the loss of one of the two synchronized actuators. This condition could create additional fatigue loading and possible cracking of the attachment fittings and could result in the inability of the remaining synchronized actuator to maintain the commanded rudder deflection, leading to reduced controllability 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 2019–0017.

(h) Exceptions to EASA AD 2019–0017

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0017 refers to its effective date, this AD requires using the effective date of this AD.

(2) For purposes of determining compliance with the requirements of this AD: Where paragraph (1) of EASA AD 2019–0017 specifies ''after the last inspection as previously required by DGAC France AD F–2004–092,'' this AD requires using ''after the most recent inspection done as specified in Airbus Service Bulletin A300–27–0188, Revision 2, dated October 1, 1997; A300–27–6036, Revision 2, dated October 1, 1997; A300–55–0044, dated October 22, 1996; A300–55–6023, dated October 22, 1996; A310–27–2082, Revision 2, dated October 1, 1997; or A310–55–2026, dated October 22, 1996.''

(3) For purposes of determining compliance with the requirements of this AD: Where paragraph (1) of EASA AD 2019–0017 refers to ''the 03 July 2004,'' this AD requires using ''September 30, 2005'' (the effective date of AD 2005–17–14).

(4) For purposes of determining compliance with the requirements of this AD: Where paragraph (4) of EASA AD 2019–0017 refers to ''during any inspection as required by paragraph (2) of this AD,'' this AD requires using ''during any inspection as required by paragraph (2) or (3) of this AD.''

(5) Where any service information referenced in EASA AD 2019–0017 specifies reporting, this AD requires reporting all inspection results at the applicable time specified in paragraph (h)(5)(i) or (h)(5)(ii) of this AD. If operators have reported findings as part of obtaining any corrective actions approved by Airbus SAS's EASA Design Organization Approval (DOA), operators are not required to report those findings as specified in this paragraph.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(6) The ''Remarks'' section of EASA AD 2019–0017 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 2019–0017 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.

(4) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Related Information

(1) For information about EASA AD 2019–0017, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *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 2019–0017 may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0402.

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

Issued in Des Moines, Washington, on May 28, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–11896 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 30

[190D0102DR/DS5A300000/DR.5A311.IA000119]

RIN 1076–AF13

Standards, Assessments, and Accountability System

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule and Tribal consultation.

SUMMARY: The Bureau of Indian Education (BIE) is proposing a rule developed using a negotiated rulemaking process, as required by the 2015 Every Student Succeeds Act (ESSA), for implementation of the Secretary of the Interior's obligation to define the standards, assessments, and accountability system consistent with ESSA for BIE-funded schools.

DATES: Please submit comments by August 9, 2019. Please see ''V. Consultation Schedule'' of this preamble for dates of consultation sessions on this proposed rule.

ADDRESSES: You may submit comments by any of the following methods:

Federal rulemaking portal: http://www.regulations.gov. The rule is listed under the agency name ''Bureau of Indian Affairs'' under Docket BIA–2016–0005.

Email: comments@bia.gov. Include the number 1076–AF13 in the subject line of the message.

Mail: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240. Include the number 1076–AF13 in the subject line of the message.

Hand delivery: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240. Include the number 1076–AF13 in the subject line of the message.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and search for Docket Number BIA–2016–0005. We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered.

Comments on the information collections contained in this proposed regulation (see ''Paperwork Reduction Act'' section, below) are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395–5806 or email to the OMB Desk Officer for the Department of the Interior at *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Please see ''V. Consultation Schedule'' of this preamble for addresses of consultation sessions on this proposed rule.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. General Description of the Proposed Rule
III. Section-by-Section Analysis
IV. Other Proposed Changes Under Consideration
V. Consultation Schedule
VI. Procedural Requirements
A. Regulatory Planning and Review (E.O. 12866 and 13563)
B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)
C. Regulatory Flexibility Act
D. Small Business Regulatory Enforcement Fairness Act
E. Unfunded Mandates Reform Act
F. Takings (E.O. 12630)

G. Federalism (E.O. 13132)
H. Civil Justice Reform (E.O. 12988)
I. Consultation With Indian Tribes (E.O. 13175)
J. Paperwork Reduction Act
K. National Environmental Policy Act
L. Effects on the Energy Supply (E.O. 13211)
M. Clarity of this Regulation
N. Public Availability of Comments

I. Background

The Office of Indian Education Programs (OIEP), now the BIE, published the existing rule for Adequate Yearly Progress (AYP), codified at 25 CFR part 30 (part 30), in the **Federal Register** on April 28, 2005 (70 FR 22178), effective May 31, 2005. The Elementary and Secondary Education Act of 1965 (ESEA), as amended and reauthorized by the No Child Left Behind Act of 2001 (NCLB), Public Law 107–110, required the Secretary of the Interior (Secretary) to engage in a negotiated rulemaking process to define AYP. NCLB required that AYP be defined on a regional or Tribal basis, as appropriate, taking into account the unique circumstances and needs of BIE-funded schools and the students served by those schools and provided further that, consistent with the negotiated rulemaking requirement, the Secretary could use State definitions of AYP. The NCLB Negotiated Rulemaking Committee ultimately recommended a rule requiring the BIE to use the definition of AYP of the State in which a BIE-funded school is located, with the option for a Tribal governing body or school board to develop and implement alternative definitions of AYP. The existing part 30 resulted from that recommendation.

There are BIE-funded schools in 23 different States, each State having its own accountability system. As a result, under the existing rule, each State system has produced student achievement data for BIE-funded schools that is not comparable with data from BIE-funded schools following the requirements of other States. This outcome has created problems for the BIE in identifying under-performing schools, reporting, and in directing resources effectively.

On November 9, 2015, BIE published a notice of intent requesting nominations for members of a proposed negotiated rulemaking committee to recommend revisions to the existing part 30 AYP regulations (80 FR 69161). On December 10, 2015, ESEA was reauthorized and amended by the ESSA (Pub. L. 114–95). The ESSA requires the Secretary to use a negotiated rulemaking process to develop regulations to implement the Secretary's responsibility to define the standards, assessments, and accountability system, consistent with ESEA section 1111, for BIE-funded schools on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of the schools and the students served by the schools. The requirement that the Secretary define the standards, assessments, and accountability system marks a significant expansion of requirements in the ESEA as amended by NCLB. The reauthorization of ESEA therefore required an update to the subject, scope, and issues that the proposed committee would address. On April 14, 2016, BIE announced its intent to expand the scope of the work of the committee and reopened the comment and nomination period, requesting comments and nominations by May 31, 2016 (81 FR 22039). The request for nominations was extended on August 17, 2016 (81 FR 54768). On January 18, 2017, a notice of proposed membership, request for nominations, and a request for comments was published (82 FR 5473). On September 14, 2017, taking into consideration the interests of the new Administration in participating fully in the negotiated rulemaking process, BIE published a new request for nominations and notice of intent to establish a negotiated rulemaking committee (82 FR 43199). On April 17, 2018, the BIE published a notice of proposed membership of the committee and a request for further nominations (83 FR 16806).

On July 26, 2018, the Secretary signed a charter for the Bureau of Indian Education Standards, Assessments, and Accountability System Negotiated Rulemaking Committee (Committee). The Secretary established the Committee to advise the Secretary, through the BIE and the Assistant Secretary-Indian Affairs, on the development of regulations to fulfill the Secretary's responsibility to define the standards, assessments, and accountability system consistent with ESEA section 1111, as amended, for schools funded by BIE on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of BIE-funded schools and the students served, and the process for waiving certain requirements, with a focus on the regulations in part 30, Adequate Yearly Progress. On August 2, 2018, the BIE published a notice of the Committee's establishment and a notice of meetings (83 FR 37822). The Committee first met in September of 2018 and agreed on protocols and a definition of consensus. The Committee met again in October and December of 2018. On February 11, 2019, the BIE published a notice announcing a fourth public Committee meeting that was held in March 2019 (84 FR 3135). In compliance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act, the meetings were open to the public to provide the public with an opportunity to participate in the rulemaking process.

There were a combined 17 primary and alternate members of the Committee, consisting of both Federal and non-Federal members. Members of the Committee consisted of representatives capable of representing the interests of students enrolled at the 174 BIE-funded schools,[1] parents of such students, school administrators, Tribes, the Indian communities served by BIE-funded schools, and the U.S. Government. A third-party neutral facilitator led all of the meetings, coordinated caucuses, provided the official minutes, and drafted the final report.

The work of the Committee required committee members to develop an understanding of the technical aspects of the topics of standards, assessments, and accountability systems. The Committee divided itself into subcommittees tasked with developing recommendations and reporting back to the Committee as a whole for each of the topics of standards, assessments, accountability systems, and waivers and technical assistance. The Committee focused on establishing a rule that would provide a framework in which the Secretary could develop or adopt requirements for standards, assessments, and accountability system and which would provide flexibility in implementing these requirements in order to allow for periodic revision of requirements as necessary consistent with the provision in ESEA section 1111 requiring the periodic review and revision of such requirements by States. During Committee discussion, some Committee members expressed concerns related to certain parts of title 25 of the Code of Federal Regulations (CFR) relating to the BIE for which the NCLB Rulemaking Committee made recommendations, but that were unrelated to the BIE Standards, Assessments, and Accountability System Committee's charge. While not within the scope of the Committee's charge, the Committee documented its concerns and recommendations on those items in the final report.

[1] This number excludes nine BIE-funded peripheral dormitories near reservations for students attending public schools.

BIE commends the Committee for their dedicated work on developing an understanding of a complicated subject matter and for reaching consensus on recommendations for many aspects of regulations necessary to implement requirements for standards, assessments, and accountability system at BIE-funded schools. The members' work resulted in the development of a recommendation on a rule that would ensure that, through a unified system of requirements, both BIE-funded schools and the students served by those schools receive all of the support and guidance that they need to provide for a high-quality education at BIE-funded schools. In addition, the Committee reached consensus on recommendations to assure that Tribal governing bodies or school boards that waive the Secretary's requirements and submit proposals for alternative requirements are properly supported in their efforts to do so.

II. General Description of the Proposed Rule

In April 2019, the Committee transmitted the Standards, Assessments, and Accountability System Negotiated Rulemaking Committee Final Consensus Report (report) to the Secretary summarizing recommendations on which the Committee reached consensus for regulations that would allow the Secretary to implement unified requirements for standards, assessments, and accountability system for BIE-funded schools and also support Tribal governing bodies or school boards that wish to pursue requirements alternative to the ones established by the Secretary. The report forms the basis for this proposed rule and is an essential part of the history for this proposed rulemaking. The Committee's recommendations to revise existing part 30, is found in Appendix E of the report. You can find the report, along with the minutes and other supporting materials for all meetings at the Committee's website at *https://www.bie.edu/Resources/NRMC/index.htm.*

The Secretary is mandated by section 8204 of ESEA to establish requirements for standards, assessments, and accountability system for BIE-funded schools consistent with ESEA section 1111, as amended, on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of BIE-funded schools and the students served by those schools. Within this context, the purpose of this negotiated rulemaking is to ensure that the Secretary and BIE are able to meet this requirement and their obligations to both BIE-funded schools and the children served by such schools. It is the intent of this proposed rule to provide simplicity, certainty, clarity, and consistency for the 174 BIE-funded schools, the students served by those schools, the parents of those students, school administrators, Tribes, and the Indian communities served by BIE-funded schools.

Among other things, the proposed rule would:

- Require the Secretary to be guided by the principles described in 25 CFR part 32 when engaging in activities under the proposed part 30;
- Require the BIE to develop a Standards, Assessments, and Accountability Plan in consultation with stakeholders that would provide Indian Tribes, parents, and stakeholders with quality, transparent, information about how the requirements of ESEA, as amended, will be implemented at BIE-funded schools;
- Reflect the language and requirements of section 1111 of ESEA for the standards, assessments, and accountability system, taking into account the unique circumstances and needs of BIE-funded schools and the students served by those schools;
- Require standards and assessments in Tribal civics;
- Incorporate Tribal civics and science into the accountability system of BIE-funded schools;
- Recognize the right of Tribal governing bodies or school boards to use Native American languages as a medium of instruction at BIE-funded immersion schools;
- Incorporate certain provisions from U.S. Department of Education regulations relating to assessments;
- Generally require BIE-funded schools to follow the requirements established by the Secretary for the standards, assessments, and accountability system unless those requirements have been waived by a Tribal governing body or school board and a proposal for alternative requirements has been approved by the Secretary and the Secretary of Education, as described in section 8204(c)(2) of ESEA;
- Require the Secretary to respond to proposals for alternative requirements in a timely manner;
- Require the Secretary to provide technical assistance to Tribal governing bodies or school boards in the development of proposals for alternative requirements and to respond to such requests in a timely manner;
- Include provisions on school supports and interventions; and
- Modify language in the current regulations not directly addressed by the Committee to align with the requirements of ESEA, as amended by ESSA.

III. Section-by-Section Analysis

Before reading the additional explanatory information below, please turn to the proposed rule language that immediately follows the ''List of Subjects in 25 CFR part 30'' in this document. DOI will codify this language in the CFR if we finalize the proposed rule as written. After you have read the proposed rule language, please return to the preamble discussion below. The preamble contains additional information about this proposed rule, such as why language might differ from the recommendation, why we defined a term in a certain manner, or why a specific standard was chosen.

BIE proposes to amend part 30 as a whole. The title of part 30 would change from ''Adequate Yearly Progress'' to ''Standards Assessments, and Accountability System.'' Some of the provisions are similar in substance, the same, or mostly the same as in the existing rule. However, the increase in scope of subject matter to be covered in the proposed rule over the existing rule required replacing certain sections and adding others. The main substantive change is the elimination of sections describing the definition of AYP and consequences for failing to make AYP, and replacing them with sections describing rules for defining the standards, assessments, and accountability system and school supports and intervention. The proposed rule would largely refer to ''requirements'' as opposed to ''definitions'' as used in the existing part 30 to provide for more accuracy and clarity.

What is the purpose of this part? (Section 30.100)

This proposed section would be substantially the same as the current § 30.100, ''What is the purpose of this part?'' However, we propose to change a reference to AYP to reflect the new requirement that the Secretary define the standards, assessments, and accountability system for BIE-funded schools. Further, the Committee reached consensus on including language regarding the responsibilities of the BIE with regard to providing a high-quality education for students served at BIE-funded schools. The Committee liked the language found in 25 CFR 32.3, containing the mission statement for the BIE, but felt that the text, including legal citations, was distracting. We propose to incorporate a statement that in carrying out activities under part 30 the Secretary will be guided by the policies

described throughout 25 CFR part 32, which have the status of codified law through 25 U.S.C. 2003.

What definitions apply to terms in this part? (Section 30.101)

As proposed, this section would be substantially the same as the current § 30.101, ''What definitions apply to terms in this part?'' However, we propose to update the terms to refer to the ''Bureau of Indian Education'' as opposed to the ''Office of Indian Education Programs'' or ''Bureau of Indian Affairs.'' We also propose to add definitions for ''Alternative proposal,'' ''Foster care,'' ''Native American language,'' ''Standards, Assessments, and Accountability Plan,'' ''Tribal governing body or school board,'' and ''Waiver.'' These new definitions are proposed for addition in response to recommendations from Committee members, or are intended to address issues raised by Committee members.

Standards, Assessments, and Accountability System Requirements (Subpart A)

This proposed Subpart would be similar to the existing §§ 30.102 through 30.104 of Subpart A, ''Defining Adequate Yearly Progress,'' of part 30. As proposed, this subpart will contain the rules for how the Secretary will develop or implement requirements for standards, assessments, and accountability system at BIE-funded schools.

What does the Act require of the Secretary? (Section 30.102)

This proposed section would be similar to the existing § 30.102, ''Does the Act require the Secretary of the Interior to develop a definition of AYP for Bureau-funded schools?'' It describes what ESEA, as amended, requires of the Secretary.

How will the Secretary implement standards, assessments, and accountability system requirements? (Section 30.103)

This proposed section would replace the existing § 30.103, ''Did the Committee consider a separate Bureau definition of AYP?'' As proposed, this section would describe a process for developing a Standards, Assessments, and Accountability Plan that would provide Indian Tribes, parents, and other stakeholders with quality, transparent, information about how the Act will be implemented for BIE-funded schools. The proposed section would require periodic review and revision of the Secretary's requirements established under part 30 as is required of States in ESEA section 1111. The proposed section describes ongoing and meaningful consultation with a diverse group of stakeholders. In parity with State authorities, the proposed section also would allow the BIE to voluntarily partner with States or Federal agencies in the development or implementation of challenging academic standards and assessments. This proposed section would incorporate language recommended by the Committee recognizing the right of Tribal governing bodies or school boards to use Native American languages as a medium of instruction at BIE-funded immersion schools but moving the proposed subsection from § 30.104(g) to § 30.103(e). BIE proposes to omit language recommended by the Committee for the proposed § 30.103(e) stating that the BIE would provide technical assistance if requested because BIE and the Department of Education are required under section 8204 of the ESEA to provide technical assistance within the context of the waivers and alternative requirements. The rule as proposed eliminates some redundancies in the language recommended by the Committee by consolidating the Committee's recommendations on paragraphs (b) and (c) and paragraphs (d) and (e) into paragraphs (b) and (c), but retains the meaning intended by the Committee.

How will the Secretary implement requirements for standards? (Section 30.104)

This and the following three proposed sections would replace the existing § 30.104, ''What is the Secretary's definition of AYP?'' They would describe the parameters around which the Secretary will develop or implement requirements for the standards, assessments, and accountability system and largely mirror the requirements of section 1111 of the Act. As proposed this section would describe how the Secretary will develop or implement requirements for standards at BIE-funded schools.

The rule as proposed would delete language recommended by the Committee regarding the implementation of standards ''on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of such schools and the students served by such schools'' both because the general requirements of section 8204 of the ESEA are already described in the proposed 25 CFR 30.102, and also because the Committee expressed an interest in national requirements subject to the process for waiving such requirements and approval of proposed alternative requirements. As proposed, the rule would specify a gradual requirement to have an ''other'' standard in Tribal civics. The Tribal civics standards would, as described by the Committee in the final report, be created and implemented for grades K–12 and would encompass elements such as Tribal sovereignty, self-determination, treaty law, land and water rights, laws based on Tribal customs and beliefs, Tribal and State relations, Tribal government processes, contemporary issues such as gaming, rights around taxation, and sacred lands as well as historical events and policies that have impacted Native peoples from a Native American perspective, including ideas on colonization, termination, and Manifest Destiny. As proposed, the Tribal civics standards would be developed after the regulations in this part are final. As noted above, the rule as proposed would move the Committee's recommendation on § 30.104(g) to § 30.103(e).

How will the Secretary implement requirements for assessments? (Section 30.105)

The Committee did not reach consensus on a recommendation with regard to assessments. The BIE proposes to separate into two sections the general requirements for assessments and provisions on the inclusion of all students in assessments. As proposed, this section would describe how the Secretary would develop or implement requirements for assessments at BIE-funded schools. The section would gradually require assessments in Tribal civics.

The proposed section would omit a provision discussed by the Committee that would have been similar to a provision in the Department of Education's regulations. *See* 34 CFR. 200.6(j)–(k). The Department of Education provision says that States are not required to use assessments written in English to assess student achievement in meeting State academic standards in read/language arts, mathematics, or science for a student who is enrolled in a school or program that provides instruction primarily in a Native American language, provided certain additional requirements have been met. BIE proposes to omit this language from § 30.105 because § 30.105 addresses how the Secretary would implement requirements for assessments for BIE-funded schools and not what a Tribal governing body or school board might accomplish through a proposal for alternative requirements as described in subpart B. Further, it is

already the established policy of the United States to encourage and support the use of Native American languages as a medium of instruction. The omission does not limit the options available to Tribal governing bodies or school boards proposing alternative requirements.

As proposed, this section would incorporate certain sections within the Department of Education's regulations of which the Committee took note during the fourth Committee meeting. As proposed, the section would also delete language discussed by the Committee regarding locally selected assessments. BIE proposes to omit this language because this provision might conflict with the process described in section 8204(c) of the ESEA for waiving requirements established by the Secretary and for approval of alternative requirements, including the role of the Secretary of Education in the process. Omitting this language will not limit the options that are available for alternative requirements since the use of such locally selected assessments could be proposed as an alternative requirement. As proposed, the section also clarifies that all required BIE assessments must undergo peer review.

How will the Secretary provide for the inclusion of all students in assessments? (Section 30.106)

As proposed, this section would describe how the Secretary would provide for the inclusion of all students in assessments.

How will the Secretary include students with disabilities in assessments? (Section 30.107)

As proposed, this section would describe how the Secretary would provide for the inclusion of all students with disabilities in assessments and have appropriate accommodations. This section would also incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting.

How will the Secretary provide for alternative assessments for students with the most significant cognitive difficulties? (Section 30.108)

As proposed, this section would describe how the Secretary would align alternative assessments for students with the most significant cognitive difficulties with alternate academic achievement standards. This section would also incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting.

How will the Secretary include English learners in content assessments? (Section 30.109)

As proposed, this section would describe how the Secretary would include English learners in content assessments, this section would incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting. This section would also clarify the requirements for English learners, and that the BIE may ask for the assistance of the Secretary of Education to meet such requirements.

How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners? (Section 30.110)

As proposed, this section would describe how the Secretary would provide for annual assessments of English language proficiency for English learners. This section would also incorporate information conforming to certain sections of the Department of Education's regulations highlighted by the Committee during the fourth Committee meeting.

How will the Secretary implement requirements for accountability system? (Section 30.111)

As proposed, this section would describe how the Secretary would develop or implement accountability system requirements at BIE-funded schools. As proposed, the section would gradually incorporate Tribal civics into the BIE-funded school accountability system as a School Quality and Student Success (SQSS) indicator. The proposed rule would require the review of the use of Tribal civics as an SQSS and allow for the later implementation of Tribal civics as an Academic Achievement Indicator. The Committee discussed the inclusion of science in the BIE's accountability system, but did not discuss how. As such, the proposed section would incorporate science into the BIE's accountability system and would provide the Secretary with discretion as to how to incorporate science. As proposed, the section would use the extended-year adjusted cohort graduation rate in addition to the four-year adjusted cohort graduation rate for long-term goals.

Waiver of Requirements, Technical Assistance, and Approval of Alternative Requirements (Subpart B)

This proposed subpart would be similar to the existing §§ 30.105–30.113 in the existing subpart A of part 30 regarding alternative definitions of AYP, technical assistance, and approval of alternative definitions. Throughout this subpart, the BIE proposes to change the use of the word ''plan'' as recommended by the Committee to ''proposal'' to better align the language of the proposed rule with the language of section 8204(c)(2) of the ESEA describing submission of proposals for alternative requirements.

May a Tribal governing body or school board waive the Secretary's requirements for the standards, assessments, and accountability system? (Section 30.112)

This proposed section would be similar to the existing § 30.105, ''May a Tribal governing body or school board use another definition of AYP?'' As proposed, this section confirms that Tribal governing bodies and school boards at Public Law 100–297 grant or Public Law 93–638 contract schools may waive the Secretary's requirements in part in or whole. As proposed, this section would also clarify that the Secretary's requirements apply until the Secretary and the Secretary of Education have approved an alternative proposal, unless a BIE-funded school is following a State system as described in § 30.113.

How does a Tribal governing body or school board waive the Secretary's requirements? (Section 30.113)

This proposed section would be similar to the existing § 30.106, ''How does a Tribal governing body or school board propose an alternative definition of AYP?'' As proposed, this section deletes language recommended by the Committee to the effect that ''Bureau-operated schools are not eligible for waivers.'' This proposed section omits this language because the definition of ''Tribal governing body or school board'' provided in the proposed § 30.101 would exclude Bureau-operated school boards. This proposed section would describe a process for submission of notice of a waiver to the Secretary and the Secretary of Education, and submission of a proposal for alternative requirements within the statutorily prescribed 60 days of notice of a waiver. The proposed section would encourage Tribal governing bodies or school boards to request technical assistance in advance of providing notice of a waiver. The section would authorize a Tribal

governing body or school board to request an extension of the statutory 60-day timeline for submission of proposals for alternative requirements. The section would explain that this process applies anytime a Tribal governing body or school board proposes alternative requirements, or proposes changes to approved alternative requirements. The section provides that the Secretary will work with the Secretary of Education to develop templates to assist in the development of alternative requirements.

As proposed, the section would provide that during the transition to the Secretary's requirements established under this part, and at any time thereafter, a Tribal governing body or school board may elect to follow the standards and assessments of a State without having to submit such requirements under the process for approval of alternative requirements, provided that the Secretary is notified of this intention and provided that the State agrees.

What should a Tribal governing body or school board include in an alternative proposal? (Section 30.114)

This proposed section would be similar to the existing § 30.107, ''What must a Tribal governing body or school board include in its alternative definition of AYP?'' As proposed, this section would require proposals for alternative requirements to include an explanation of how the alternative proposal meets the requirements of ESEA section 1111, taking into account the unique circumstances and needs of BIE-funded schools and the students served at those schools.

May proposed alternative requirements use parts of the Secretary's requirements? (Section 30.115)

This proposed section would be similar to the existing § 30.108, ''May an alternative definition of AYP use parts of the Secretary's definition?'' As proposed, this section would explain that proposals for alternative requirements may use parts of the Secretary's requirements and that, where these are incorporated, the alternative proposal should identify those requirements.

Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking to develop alternative requirements? (Section 30.116)

This section would be similar to the existing § 30.109, ''Will the Secretary provide assistance in developing an alternative AYP definition?'' As proposed, this section would explain that the Secretary and the Secretary of Education are required to provide technical assistance. The section would require a Tribal governing body or school board to submit a request for technical assistance to the Director of the BIE and would provide for technical assistance on an ongoing and timely basis.

What is the process for requesting technical assistance? (Section 30.117)

This section would be similar to the existing § 30.110, ''What is the process for requesting technical assistance to develop an alternative definition of AYP?'' As proposed, this section would require requests for technical assistance to be in writing to the Director of the BIE from a Tribal governing body or school board. It would provide that the Director would acknowledge receipt of such a request and identify a point of contact within 30 days. The section would also provide that the Director and a Tribal governing body or school board would work together to identify the form, substance, and timeline for providing technical assistance.

When should a Tribal governing body or school board request technical assistance? (Section 30.118)

This section would be similar to the existing § 30.111, ''When should the Tribal governing body or school board request technical assistance?'' As proposed, this section would provide that a Tribal governing body or school board may request technical assistance at any time, and would encourage Tribal governing bodies or school boards to request technical assistance prior to providing notice of a waiver. The section as proposed would alter wording recommended by the Committee slightly from ''to issue a waiver'' to ''to waive the requirements established by the Secretary'' for clarity.

How does the Secretary review and approve proposals for alternative requirements? (Section 30.119)

This section would be similar to the existing § 30.113, ''How does the Secretary review and approve an alternative definition of AYP?'' As proposed, this section would describe the process for review and approval of proposals for alternative requirements by the Secretary and the Secretary of Education. It would also describe that such proposals would be approved unless the Secretary of Education determines that the alternative requirements do not meet the requirements of section 1111 of ESEA, taking into account the unique circumstances and needs of BIE-funded schools and the students served at those schools. The section would describe how the Secretary would begin to coordinate with the Secretary of Education upon receipt of a proposal for alternative requirements. The section would require the Secretary to provide a status update within 120 days of receipt of a proposal for alternative requirements and every 30 days thereafter. The section would explain that Tribal governing bodies or school boards would be notified promptly of approval of a proposal for alternative requirements as well as the effective date of such alternative requirements. The section would provide for technical assistance and an explanation if a proposal for alternative requirements is not approved. Finally, the section would provide that a Tribe could request formal consultation if a proposal for alternative requirements is not approved or if progress is not being made towards approval.

Support and Improvement (Subpart C)

This proposed subpart would be analogous to the existing subpart B, ''Assessing Adequate Yearly Progress,'' and subpart C, ''Failure to make Adequate Yearly Progress'' of the existing part 30, §§ 30.114–30.125. As proposed, the subpart would describe requirements for comprehensive support and improvement for schools as well as targeted support and improvement for schools.

How will the Secretary implement school support and improvement activities? (Section 30.120)

This section would provide that the Secretary would notify BIE-funded schools identified for comprehensive support and improvement.

How will the Secretary implement comprehensive support and improvement? (Section 30.121)

This section would provide for the development, implementation, and monitoring of comprehensive support and improvement plans.

How will the Secretary implement targeted support and improvement? (Section 30.122)

This section would provide that the Secretary would notify schools in which any subgroup of students is currently underperforming and would provide for the development and implementation of targeted support and improvement plans.

How will the Secretary implement additional targeted support? (Section 30.123)

This section would provide that where a school is, for any subgroup, within the lowest-performing 5 percent of all schools within the BIE-funded school system using the BIE's system for annual meaningful differentiation, the targeted support and improvement plan would also identify resource inequalities to be addressed through implementation of the plan. For the first year of implementation of the Secretary's requirements, the section would provide that the Secretary will identify any BIE-funded school in which any subgroup of students on its own would lead to identification because it would be within the lowest-performing 5 percent of all schools.

How will the Secretary implement continued support for BIE-funded schools and school improvement? (Section 30.124)

This section would provide that the Secretary would establish exit criteria for schools identified for comprehensive support and improvement and schools identified for additional targeted support. The section would also provide for the periodic review by the Secretary of resource allocations to support school improvement.

Responsibilities and Accountability (Subpart D)

This proposed subpart would be similar to the existing subpart D, ''Responsibilities and Accountability,'' §§ 30.126 and 30.150.

What is required for the Bureau to meet its report responsibilities? (Section 30.125)

This section would be similar to the existing § 30.126, ''What is required for the Bureau to meet its reporting responsibilities?'' regarding BIE reporting requirements, but updated to reflect current requirements.

Information Collection (Section 30.126)

This section would be similar to the existing § 30.150, ''Information collection,'' regarding the collection of information by the BIE.

IV. Other Proposed Changes Under Consideration

A. Standards, Assessments, and Accountability Plan

BIE is considering the advisability of, and whether and to what extent, a requirement for a Standards, Assessments, and Accountability Plan as described in § 30.103(b) of this proposed rule should be incorporated into the final rule and welcomes comments, including comments on whether such a requirement should be regulatory or addressed elsewhere (such as in the agreement with the Secretary of Education required by section 8204(a) of ESEA).

B. Ongoing Stakeholder Consultation and Transparency

BIE is considering whether and to what extent stakeholder consultation as described in § 30.103(c) of this proposed rule should be incorporated into the final rule. For instance, such requirements could be duplicative of, or in conflict with, existing Departmental policies and statutory responsibilities, or might require statutory authorization. BIE welcomes comments on these matters.

C. Tribal Civics Standards, Assessments, and Accountability

The BIE is considering whether and to what extent to specify Tribal civics as described in §§ 30.104(c)(1)(iv), 30.105(a), and 30.111(d) in the final rule. For instance, the regulation would otherwise authorize the Secretary to implement ''other'' requirements without having to specify the other requirements in regulation. Further, the BIE thinks that it might be more appropriate for Tribal civics to be implemented by a Tribal governing body or school board through a proposal for alternative requirements as described in subpart B of the proposed rule.

D. Science and Accountability

The Committee recommended the incorporation of science into the BIE's accountability system, but did not specify how it should be incorporated. BIE is considering whether and to what extent to specify the incorporation of science into the Secretary's accountability system as described in § 30.111(c). As with Tribal civics, the regulation would otherwise authorize the Secretary to incorporate science and other subjects into the accountability system without having to specify such other requirements in regulation. Also as with Tribal civics, a Tribal governing body could accomplish incorporation of science into the requirements applicable at a particular school or school board through a proposal for alternative requirements as described in subpart B of the proposed rule, as the Miccosukee Tribe of Indians of Florida did under the NCLB regulations.

Some States have incorporated science into their accountability systems. However, the majority of States have not. In ESEA, as amended, States are required to adopt challenging science academic content standards and to implement aligned science assessments in selected grades, and in this proposed rule BIE would also be held to those requirements. Science requires higher-level literacy and numeracy skills, which students in low performing schools generally require support to accomplish. Including science as an academic indicator could therefore raise the threshold of success for certain students and schools. One committee member voiced the opinion that science should be included as a weighted indicator because of the importance of the subject. BIE agrees with the Committee with regard to the importance of science and notes that Congress has also recognized the importance of the subject by making it a requirement for all schools in the nation. BIE welcomes comments on these matters and on the effect of a requirement to incorporate science into the accountability system. BIE also welcomes comments on specifying a weight in the regulation for a proposed academic indicator for science.

E. Tribal Civics and Science as School Quality and Student Success Indicators

The rulemaking committee recommended two School Quality and Student Success (SQSS) indicators: Tribal civics and science. BIE welcomes comments on whether, to what extent, and the appropriate method for, the inclusion of such indicators. The proposed regulation would otherwise require periodic review and revision of the Secretary's requirements generally, and would otherwise authorize the Secretary to exercise discretion in the inclusion of other subjects into the accountability system. BIE notes that some Committee members expressed an interest in ensuring that BIE would be held to the same or similar requirements as States, and that States generally have discretion in the selection and implementation of indicators such as SQSS in response to the interests of students. In addition, as with Tribal civics and science generally, a Tribal governing body or school board wishing to implement Tribal civics and science could likely propose doing so in a variety of ways through a proposal for alternative requirements as described in Subpart B of the proposed rule.

F. Native American Languages and the Standards, Assessments, and Accountability System

Section 30.104(f) of the proposed rule contains provisions describing the right of Tribal governing bodies or school

boards to use Native American languages as a medium of instruction. BIE is considering whether, how, and to what extent Native American languages should be described in the proposed rule. The Committee did not fully explain the concepts that they wished to recommend be incorporated into the proposed rule in regards Native American languages. There is a chance of conflict with other statutory and regulatory authorities describing the importance and status of Native American languages, such as those already supportive of the use of Native American languages as a medium of instruction. BIE welcomes comments on these and other related matters.

G. School Supports and Interventions

The Committee did not discuss school supports and interventions as described in the proposed rule at subpart C, §§ 30.120 through 30.124. However, BIE is considering whether and to what extent to incorporate school supports and interventions into the final rule and welcomes comments on the provisions included in this proposed rule, or whether such matters should be addressed elsewhere such as in the Secretary's Standards, Assessments, and Accountability Plan or in the ESEA section 8204(a) agreement with the Secretary of Education. BIE also welcomes comment on the amount of autonomy BIE-operated schools should have under this process.

H. State Standards and Assessments Opt-In During Transition

The proposed provisions in § 30.112(g) regarding an option for Tribal governing bodies of school boards to opt in to State requirements apart from the waiver and alternative proposal process described in the proposed subpart B, §§ 30.112 through 30.119, might conflict with statutory intent in ESEA section 8204(c) regarding the approval of alternative requirements, including the statutorily prescribed role of the Secretary of Education. In addition, the Committee expressed an interest in the establishment of a unified system of accountability for BIE-funded schools, and this or similar opt-out provisions might conflict with that goal and complicate efforts to hold schools accountable. BIE welcomes comments on whether or how to incorporate this or similar concepts.

I. Waivers, Timelines for Waivers, and Processing of Proposals Alternative Requirements

BIE is considering changes to the timelines recommended by the Committee for waivers and the processing of proposals for alternative requirements described in subpart B, §§ 30.112 through 30.119, and welcomes comments on the proposed timelines. For instance, the requirement for status updates on the processing of a proposal for alternative requirements every 30 days might require unnecessary or redundant communication with a Tribal governing body or school board even if there, for instance, is robust and ongoing communication. The BIE is further considering changes to the proposed § 30.118 to more closely reflect the language of the existing § 30.115 or generally amend the language for clarity. The BIE may also omit § 30.119(e) from the final rule as it may be duplicative of or in conflict with the Department's existing Tribal consultation policies.

J. Supports and Interventions

The proposed rule contains a subpart C, ''Support and Improvement,'' intended to be similar to the existing subpart B, ''Assessing Adequate Yearly Progress,'' and subpart C, ''Failure to make Adequate Yearly Progress.'' The BIE is still considering whether or how these or similar provisions should be included in the final rule and welcomes comments on this topic. If these provisions are included, they may also be included after § 30.111, ''How will the Secretary implement requirements for accountability system?'' and before subpart B, ''Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements.''

V. Consultation Schedule

The BIE will conduct a series of consultation sessions regarding its proposed rule. The Committee provided advice to the Secretary on a proposed rule that would provide a framework around which the Secretary could develop requirements for the standards, assessments, and accountability system and which would provide flexibility in implementing these requirements in order to allow for periodic revision of requirements as necessary consistent with the provisions in ESEA section 1111 requiring the periodic review and revision of the requirements. The interests that are likely to be significantly affected by the proposed rule are: Students enrolled, or parents of students enrolled at the 174 BIE-funded schools, school teachers and administrators, Tribes, and Indian communities served by these schools.

The BIE will conduct five on-site consultation sessions and one telephonic sessions. The on-site consultation sessions will be held at geographically diverse locations across the country to maximize input. BIE will accept both oral and written comments. The following table lists dates and locations for the consultations. You can find additional information, along with the minutes and other supporting materials for all meetings at the Committee's website at *https://www.bie.edu/Resources/NRMC/index.htm.* The BIE strongly recommends interested parties review the proposed rule prior to attending a consultation session. The consultation sessions scheduled to date are as follows:

Date	Time (local time zone)	Location information *
Thursday, July 11, 2019	8:30 a.m.–5 p.m.	Southwestern Indian Polytechnic Institute (SIPI), 9169 Coors Blvd., Albuquerque, NM 87120.
Tuesday, July 16, 2019	8:30 a.m.–5 p.m.	Arizona (specific venue TBD).
Thursday, July 18, 2019	8:30 a.m.–5 p.m.	Oglala Lakota College, 490 Piya Wiconi Road, Kyle, SD 57752.
Tuesday, July 23, 2019	8:30 a.m.–5 p.m.	2001 Killebrew Drive, Minnesota Room, Bloomington, MN 55425.
Friday, July 26, 2019	1 p.m.–5 p.m.	Teleconference or webinar.
Tuesday, July 30, 2019	8:30 a.m.–5 p.m.	Washington (specific venue TBD).

* Please refer to this website for specific and updated information: *https://www.bia.gov/as-ia/raca/regulations-development-andor-under-review/BIE-SAA.*

Additional consultation sessions will be announced on the website above.

VI. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. The BIE has developed this proposed rule in a manner consistent with these requirements. In addition, section 8204 of the ESEA, as amended, directs the Secretary of the Interior, in consultation with the Secretary of Education, if so requested, to use a negotiated rulemaking process to develop regulations for implementation of the Secretary of the Interior's obligation to define the standards, assessments and accountability system that will be utilized at BIE-funded schools. This rule is also part of the Department's commitment under the Executive Order to reduce the number and burden of regulations.

B. Reducing Regulations and Controlling Regulatory Costs (E.O. 13771)

E.O. 13771 of January 30, 2017, directs Federal agencies to reduce the regulatory burden on regulated entities and control regulatory costs. E.O. 13771, however, applies only to significant regulatory actions, as defined in Section 3(f) of E.O. 12866. Therefore, E.O. 13771 does not apply to this rule.

C. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

D. Small Business Regulatory Enforcement Fairness Act

This rule would not be a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more because it is the responsibility and goal for the Federal government to provide comprehensive education programs and services for Indian Tribes and Alaska Natives.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, Indian or local government agencies, or geographic regions because this proposed rule affects only the children served at BIE-funded schools.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises because this rule affects only the children served at BIE-funded schools.

E. Unfunded Mandates Reform Act

This rule would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) would not be required.

F. Takings (E.O. 12630)

Under the criteria in section 2 of E.O. 12630, this rule would not have any significant takings implications. This rule would not impose conditions or limitations on the use of any private property or otherwise have taking implications under Executive Order 12630 because this rule does not affect individual property rights protected by the Fifth Amendment or involve a compensable ''taking.'' A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking would not substantially and directly affect the relationship between the Federal and State government. The Secretary of the Interior is responsible for managing BIE-funded schools and interacting with Tribal governments or Tribal organizations operating Tribally-controlled grant and contract schools. Because this rule would not alter that relationship, a Federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be writing to minimize litigation.

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty.

Under the Department's consultation policy and the criteria in E.O. 13175, we evaluated this rule and determined that it would have no Tribal implications that would impose substantial direct compliance costs on Indian Tribal governments.

Also, under this consultation policy and Executive Order criteria with Indian Tribes and other individual stakeholders, BIE has scheduled consultations that are listed in Section V. Consultation Schedule.

J. Paperwork Reduction Act

This rule contains information collections requiring approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* The Department is seeking approval for a new OMB Control Number.

OMB Control Number: 1076–NEW.

Title: Standards, Assessments, and Accountability System Waiver.

Brief Description of Collection: This information collection is necessary to implement the ESSA. The ESSA requires all schools, including BIE-funded and operated schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. In order to accomplish these goals, the Secretary would develop or implement accountability

system requirements at BIE-funded schools. Tribal governing bodies and school boards at Public Law 100–297 grant or Public Law 93–638 contract schools will be able to waive the Secretary's requirements in part in or whole and will be required to submit a proposal for alternative requirements.

Type of Review: Existing collection in use without OMB control number.

Respondents: BIE-funded schools.

Number of Respondents: Two on average (each year).

Number of Responses: Two on average (each year).

Frequency of Response: On occasion.

Estimated Time per Response: 500 hours.

Estimated Total Annual Hour Burden: 1,000 hours.

Estimated Total Non-Hour Cost: $0.

K. National Environmental Policy Act

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. We are not required to provide a detailed statement under the National Environmental Policy Act of 1969 (NEPA) because this rule qualifies for categorical exclusion under 43 CFR 46.210(f) and (i) and the DOI Departmental Manual, part 516, section 15.4.D: (f)–(i). We have also determined that this rulemaking is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule would not be a significant energy action under the definition in Executive Order 13211, and therefore, would not require a Statement of Energy Effects.

M. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and,

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

N. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 30

Elementary and secondary education, Grant programs—Indians, Indians—education, Schools.

For the reasons set forth in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to revise 25 CFR part 30 to read as follows:

PART 30—STANDARDS, ASSESSMENTS, AND ACCOUNTABILITY SYSTEM

Sec.

30.100 What is the purpose of this part?
30.101 What definitions apply to terms in this part?

Subpart A—Standards, Assessments, and Accountability System Requirements

30.102 What does the Act require of the Secretary?
30.103 How will the Secretary implement Standards, Assessments and Accountability requirements?
30.104 How will the Secretary implement requirements for standards?
30.105 How will the Secretary implement requirements for assessments?
30.106 How will the Secretary provide for the inclusion of all students in assessments?
30.107 How will the Secretary include students with disabilities in assessments?
30.108 How will the Secretary provide for alternative assessments for students with the most significant cognitive difficulties?
30.109 How will the Secretary include English learners in content assessments?
30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?
30.111 How will the Secretary implement requirements for accountability system?

Subpart B—Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements

30.112 May a Tribal governing body or school board waive the Secretary's requirement for standards, assessments, and accountability system?
30.113 How does a Tribal governing body or school board waive the Secretary's requirements?
30.114 What should a Tribal governing body or school board include in an alternative proposal?
30.115 May proposed alternative requirements use parts of the Secretary's requirements?
30.116 Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking to develop alternative requirements?
30.117 What is the process for requesting technical assistance?
30.118 When should the Tribal governing body or school board request technical assistance?
30.119 How does the Secretary review and approve alternative requirements?

Subpart C—Support and Improvement

30.120 How will the Secretary implement school support and improvement activities?
30.121 How will the Secretary implement comprehensive support and improvement?
30.122 How will the Secretary implement targeted support and improvement?
30.123 How will the Secretary implement additional targeted support?
30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

Subpart D—Responsibilities and Accountability

30.125 What is required for the Bureau to meet its reporting responsibilities?
30.126 What information collections have been approved?

Authority: Pub. L. 114–94, 129 Stat. 1312, 20 U.S.C. 6311 *et. seq.;* 20 U.S.C. 7824(c).

§ 30.100 What is the purpose of this part?

(a) This part establishes regulations regarding standards, assessments, and accountability system at BIE-funded schools consistent with section 1111 of the Elementary and Secondary Education Act of 1965. Nothing in this part:

(1) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;

(2) Affects in any way the sovereign rights of Indian Tribes; or

(3) Terminates or changes the trust responsibility of the United States to Indian Tribes or individual Indians.

(b) In carrying out activities under this part, the Secretary will be guided by the policies stated in 25 CFR part 32.

§ 30.101 What definitions apply to terms in this part?

Act means the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Public Law 114–95, enacted December 10, 2015.

Alternative proposal means a proposal submitted by a Tribal governing body or school board for requirements, in whole or in part, alternative to the ones adopted by the Secretary for standards, assessments, or accountability system at Public Law 100–297 grant or Public Law 93–638 contract schools under this part.

BIE-funded school(s) means a school funded by the Bureau of Indian Education and includes Bureau-operated schools and Tribally controlled schools.

Bureau or *BIE* means the Bureau of Indian Education.

Bureau-operated school means a school operated by the Bureau of Indian Education.

Department means the Department of the Interior.

Director means the Director of the Bureau of Indian Education.

Foster care means 24–hour substitute care for children placed away from their parents and for whom the agency under title IV–E of the Social Security Act has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, Tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

Native American language means the historical, traditional languages spoken by members of federally recognized Indian Tribes.

Secretary means the Secretary of the Interior or a designated representative.

Subgroup of students means

(1) Economically disadvantaged students;

(2) Students from major racial and ethnic groups;

(3) Children with disabilities; and

(4) English learners.

Standards, Assessments, and Accountability Plan means a document that will provide Indian Tribes, parents, and stakeholders with quality, transparent information about how a standards, assessments, and accountability system will be implemented at a BIE-funded school.

Tribally controlled school means a school operated under a Public Law 93–638 contract or Public Law 100–297 grant.

Tribal governing body or *school board* means, with respect to waiver and submission of proposals for requirements alternative to the Secretary's requirements for standards, assessments, and accountability system at Tribally controlled schools, the entity authorized under applicable Tribal or Federal law to waive the Secretary's requirements and propose alternative requirements.

Waiver means the exercise of authority by a Tribal governing body or school board for Tribally controlled schools to elect to implement requirements, in part or in whole, alternative to the ones adopted by the Secretary pursuant to this part at schools that are under the Tribal governing body's or school board's jurisdiction following approval of the proposal for alternative requirements by the Secretary and the Secretary of Education pursuant to section 8204 of the Act.

Subpart A—Standards, Assessments, and Accountability System Requirements

§ 30.102 What does the Act require of the Secretary?

(a) The Act requires the Secretary to define a standards, assessments, and accountability system, consistent with section 1111 of the Act, for schools on a national, regional, or Tribal basis, as appropriate, taking into account the unique circumstances and needs of the schools and the students served, using regulations developed through a negotiated rulemaking process.

(b) If it has determined that the requirements described in paragraph (a) are inappropriate, a Tribal governing body or school board may waive these requirements, in part or in whole, and propose alternative requirements for standards, assessments, and accountability system that meets the requirements of section 1111 of the Act, taking into account the unique circumstances and needs of the school or schools and the students served.

(c) The Secretary and the Secretary of Education will provide technical assistance, upon request, either directly or through a contract, to a Tribal governing body or school board.

§ 30.103 How will the Secretary implement Standards, Assessments, and Accountability System requirements?

(a) The Secretary, through the Director, must prescribe requirements for standards, assessments, and accountability system for use at BIE-funded schools in accordance with this part. The Secretary must periodically review and revise these requirements.

(b) The Director will implement a Standards, Assessments, and Accountability Plan that will provide Indian Tribes, parents, and stakeholders with quality, transparent information about how the Act will be implemented at BIE-funded schools, including the requirements that have been established for standards, assessments, and accountability system for BIE-funded schools.

(c) The Secretary will engage in active, meaningful, ongoing consultation with a diverse group of stakeholders inclusive of parents, educators (such as administrators and educators from BIE-operated schools and Tribally controlled grant schools), students and community members, and government-to-government consultation with Tribal governments, when creating, implementing, reviewing, and revising the requirements for standards, assessments, and accountability system for BIE-funded schools. These stakeholder and government-to-government consultations will include transparent reporting, recording, and responding to input obtained therein.

(d) The Secretary may voluntarily partner with States, or another Federal agency, to develop and implement challenging academic standards and assessments.

(e) Tribal governing bodies or school boards may create their own Native American language academic standards and Native American language assessments in addition to those required by section 1111 of the Act. The Secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over such standards or assessments or require the submission of such standards and assessments to the Secretary for review or approval.

§ 30.104 How will the Secretary implement requirements for standards?

(a) The Secretary will implement requirements for academic standards for BIE-funded schools by adopting:

(1) Challenging academic content standards, and

(2) Aligned academic achievement standards consistent with paragraph (c) of this section.

(b) The requirements for academic standards include at least three levels of achievement and are hereinafter collectively referred to as ''challenging academic standards.''

(c) The academic standards will apply to all BIE-funded schools and the students served at those schools unless the standards have been waived by a Tribal governing body or school board and a proposal for alternative requirements approved.

(1) The academic standards will include:

(i) Mathematics;

(ii) Reading or Language Arts;

(iii) Science;

(iv) Tribal civics; and

(v) Any other subject determined by the Secretary.

(2) Tribal civics will be phased into the Secretary's requirements for assessments and accountability system starting as a school quality indicator and revisited as implemented. Assessments and an assessment schedule will be developed for Tribal civics at the conclusion of the processes described in § 30.103.

(d) The standards, except Tribal civics, must be aligned to entrance requirements for credit-bearing coursework in higher education and relevant career and technical education standards.

(e) This paragraph applies to academic achievement standards for students with the most significant cognitive disabilities. The Secretary must, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities that:

(1) Are aligned with the challenging BIE academic content standards under paragraphs (a) and (b) of this section;

(2) Promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*);

(3) Reflect professional judgment as to the highest possible standards achievable by the students;

(4) Are designated in the individualized education program developed under section 614(d)(3) of IDEA (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and

(5) Are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or competitive integrated employment, consistent with the purposes of the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act, as in effect on July 22, 2014.

(f) The Secretary will adopt English language proficiency standards that:

(1) Are derived from the four (4) recognized domains of speaking, listening, reading, and writing;

(2) Address the different proficiency levels of English learners; and

(3) Are aligned with the BIE's challenging academic standards.

§ 30.105 How will the Secretary implement requirements for assessments?

(a) The BIE will implement a set of high quality student academic assessments in mathematics, reading or language arts, science, and Tribal civics. Tribal civics assessments and an assessment administration schedule will be developed at the conclusion of the processes described in § 30.103, except that the Secretary will phase in the requirement for assessments aligned with the Tribal civics standards. The BIE retains the right to implement the assessments in any other subject chosen by the BIE.

(b) The assessment requirements must:

(1) Except with respect to alternate assessments for students with the most significant cognitive disabilities, be:

(i) The same academic assessments used to measure the achievement of all BIE-funded school students; and

(ii) Administered to all BIE-funded school students, including the following highly-mobile student populations:

(A) Students with status as a migratory child;

(B) Students with status as a homeless child or youth;

(C) Students with status as a child in foster care;

(D) Students with status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty;

(2) Be aligned with the BIE's challenging academic standards, and provide coherent and timely information about student attainment of such standards and whether the student is performing at the student's grade level;

(3) Be used for purposes for which such assessments are valid and reliable, consistent with relevant, nationally recognized professional and technical testing standards; objectively measure academic achievement, knowledge, and skills; and use tests that do not evaluate or assess personal or family beliefs and attitudes, or publicly disclose personally identifiable information, except that this provision does not preclude the use of:

(i) Constructed-response, short answer, or essay questions; or

(ii) Items that require a student to analyze a passage of text or to express opinions;

(4) Be of adequate technical quality for each purpose required under the Act and consistent with the requirements of this section, the evidence of which shall be made public, including on the BIE website;

(5) Be administered:

(i) In the case of mathematics and reading or language arts:

(A) In each of grades three (3) through eight (8); and

(B) At least once in grades nine (9) through twelve (12);

(ii) In the case of science, not less than one time during:

(A) Grades three (3) through five (5);

(B) Grades six (6) through nine (9); and

(C) Grades ten (10) through twelve (12);

(iii) In the case of any other subject chosen by the BIE, at the discretion of the BIE; and

(6) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills, such as critical thinking, reasoning, analysis, complex problem solving, effective communication, and understanding of challenging content, which may:

(i) Include valid and reliable measures of student academic growth at all achievement levels to help ensure that the assessment results could be used to improve student instruction; and

(ii) Be partially delivered in the form of portfolios, projects, or extended performance tasks;

(7) At the BIE's discretion, be administered through:

(i) A single summative assessment; or

(ii) Multiple Bureau-wide interim assessments during the course of the academic year that result in a single summative score that provides valid, reliable, and transparent information on student achievement or growth;

(8) Produce individual student interpretive, descriptive, and diagnostic reports, consistent with paragraph (b)(3) of this section, regarding achievement on such assessments that allow parents, teachers, principals, and other school leaders to understand and address the specific academic needs of students, and that are provided to parents, teachers, and school leaders, as soon as is practicable after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(9) Enable results to be disaggregated:

(i) Within the Bureau and each BIE-funded school by:

(A) Each major racial and ethnic group;

(B) Economically disadvantaged students as compared to students who are not economically disadvantaged;

(C) Children with disabilities as compared to children without disabilities;

(D) English proficiency status;

(E) Gender;

(F) Migrant status;

(G) Status as a homeless child or youth as defined in section 725(2) of title VII, subtitle B of the McKinney–Vento Homeless Assistance Act, as amended;

(H) Status as a child in foster care; and

(I) Status as a student with a parent who is a member of the armed forces on active duty or serves on full-time National Guard duty.

(ii) Disaggregation is not required in the cases in which the number of students in a subgroup is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.

(10) Enable itemized score analyses to be produced and reported, consistent with paragraph (b)(3) of this section, to BIE-funded schools, so that parents, teachers, principals, other school leaders, and administrators can interpret and address the specific academic needs of students as indicated by the students' achievement on assessment items; and

(11) Be designed and developed:

(i) To be valid and accessible for use by all students, including students with disabilities and English learners; and

(ii) To the extent practicable, using the principles of universal design for learning. For the purposes of this section, ''universal design for learning'' means a scientifically valid framework for guiding educational practice that:

(A) Provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and

(B) Reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and English learners.

(c) *Exception for Advanced Mathematics in Middle School.* The BIE may exempt any eighth (8th) grade student from the assessment in mathematics ordinarily administered in grade eight (8) if:

(1) The student takes the mathematics assessment required to be administered at least once in grades nine (9) through twelve (12);

(2) The student's performance on the high school assessment is used in the year in which the student takes the assessment in mathematics ordinarily administered in grade eight (8) for purposes of measuring academic achievement in mathematics, and participation in assessments is used for purposes of § 30.111(e)(4); and

(3) In high school, such student takes a mathematics assessment required to be administered at least once in grades nine (9) through twelve (12) that:

(i) Is any end-of-course assessment or other assessment that is more advanced than the assessment required to be administered at least once in grades nine (9) through twelve (12);

(ii) Shall be used to measure such student's academic achievement for purposes of § 30.111(e)(1);

(iii) Provides for appropriate accommodations; and

(iv) The student's performance on the more advanced mathematics assessment is used for purposes of measuring academic achievement under § 30.111(e) and participation in assessments under § 30.111(g).

(4) The BIE will describe in its Standards, Assessments, and Accountability Plan, with regard to this exception, its strategies to provide all students at BIE-funded schools the opportunity to be prepared for and to take advanced mathematics coursework in middle school.

(d) *Adaptive Assessments.* (1) BIE retains the right to develop and administer computer adaptive assessments as the assessments described in this section, provided the computer adaptive assessments meet the requirements of this section, except that:

(i) The requirement that the same academic assessments must be used to measure the achievement of all BIE-funded school students and that the assessments must be administered to all BIE-funded school students may not be interpreted to require that all students taking the computer adaptive assessment be administered the same assessment items; and

(ii) Such assessment:

(A) Must measure, at a minimum, each student's academic proficiency based on the BIE's challenging academic standards for the student's grade level and growth toward such standards; and

(B) May measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of the BIE's accountability system.

(2) In developing and administering computer adaptive assessments for students with the significant cognitive disabilities and English learners:

(i) The BIE will ensure that the computer adaptive assessments for students with the most significant cognitive disabilities:

(A) Assess a student's academic achievement based on the challenging academic content standards for the grade in which the student is enrolled;

(B) Meet the requirements of this section and §§ 30.106 through 30.110, including § 30.108, except the assessments are not required to meet the requirements of § 30.108(a)(4); and

(C) Assess the student's academic achievement to measure, in the subject being assessed, whether the student is performing at the student's grade level; and

(ii) The BIE will ensure that computer adaptive assessments for English learners:

(A) Meet the requirements §§ 30.106 through 30.110, including § 30.108, except the assessments are not required to meet the requirements of § 30.108(a)(4); and

(B) Assess the student's English language proficiency, which may include growth towards such proficiency, in order to measure the student's acquisition of English.

(e) All required BIE assessments must undergo peer review to ensure that the assessments meet all applicable requirements.

(f) *Rule of Construction on Parental Rights.* Nothing in this section may be construed as preempting Tribal law at a Tribally controlled school regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph.

(g) *Limitation on Assessment Time.* The Secretary may set a target limit on the aggregate amount of time devoted to the administration of assessments for each grade, expressed as a percentage of annual instructional hours.

§ 30.106 How will the Secretary provide for the inclusion of all students in assessments?

Assessments must provide for:

(a) The participation of all students;

(b) The participation of students with disabilities, as detailed in § 30.107 and § 30.108; and

(c) The participation of English learners, as detailed in § 30.109.

§ 30.107 How will the Secretary include students with disabilities in assessments?

(a) The Secretary must include students with disabilities in all assessments, with appropriate accommodations. For purposes of this

section, students with disabilities, collectively, are:

(1) All children with disabilities as defined under section 602(3) of the IDEA;

(2) Students with the most significant cognitive disabilities who are identified from among the students in paragraph (a)(1) of this section; and

(3) Students with disabilities covered under other acts, including:

(i) Section 504 of the Rehabilitation Act of 1973, as amended; and

(ii) Title II of the Americans with Disabilities Act (ADA), as amended.

(b) *Alignment of assessments.* (1) Except as provided below, a student with a disability must be assessed with an assessment aligned with the BIE's challenging academic standards for the grade in which the student is enrolled.

(2) A student with the most significant cognitive disabilities may be assessed with:

(i) The general assessment under § 30.106(b); or

(ii) The alternate assessment under § 30.108 aligned with the BIE's challenging academic content standards for the grade in which the student is enrolled and the BIE's alternate academic achievement standards.

(c) The BIE must ensure that students with disabilities have the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for students with disabilities, including students with the most significant cognitive disabilities, necessary to measure the academic achievement of such children relative to the BIE's challenging academic standards or alternate academic achievement standards described in § 30.104(d) and § 30.104(e).

(d) The BIE must ensure that general and special education teachers, paraprofessionals, teachers of English learners, specialized instructional support personnel, and other appropriate staff receive necessary training to administer assessments and know how to administer assessments, including, as necessary, alternate assessments, and know how to make use of appropriate accommodations during assessment for all students with disabilities, consistent with section 1111(b)(2)(B)(vii)(III) of the Act.

(e) The BIE must ensure that the use of appropriate accommodations under paragraph (c) of this section does not deny a student with a disability:

(1) The opportunity to participate in the assessment; and

(2) Any of the benefits from participation in the assessment that are afforded to students without disabilities.

§ 30.108 How will the Secretary provide for alternative assessments for students with the most significant cognitive difficulties?

(a) Alternative assessments aligned with alternate academic achievement standards. The BIE will provide for alternate assessments aligned with the BIE's challenging academic content standards and alternate academic achievement standards described in § 30.104(d) and § 30.104(e) for students with the most significant cognitive disabilities. The BIE must:

(1) Consistent with paragraph (b) of this section, ensure that, for each subject, the total number of students assessed in the subject using the alternate assessments does not exceed one (1) percent of the total number of all students in the BIE-funded school system who are assessed in the subject;

(2) With regard to the percentage of students assessed under this paragraph:

(i) Not prohibit a BIE-funded school from assessing more than one (1) percent of its assessed students in any subject for which assessments are administered with an alternate assessment aligned with alternate academic achievement standards;

(ii) Require that a BIE-funded school submit information justifying the need of the BIE-funded school to assess more than one (1) percent of its assessed students in any such subject with such an alternate assessment;

(iii) Provide appropriate oversight of a BIE-funded school that is required to submit information to the BIE; and

(iv) Make the information submitted by a BIE-funded school under paragraph (a)(2)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

(3) With regard to Individual Education Plan (IEP) teams:

(i) Establish, consistent with section 612(a)(16)(C) of the IDEA, and monitor implementation of clear and appropriate guidelines for IEP teams to apply in determining, on a case-by-case basis, which students with the most significant cognitive disabilities will be assessed based on alternate academic achievement standards. Such guidelines must include a BIE definition of ''students with the most significant cognitive disabilities'' that addresses factors related to cognitive functioning and adaptive behavior, such that:

(A) The identification of a student as having a particular disability as defined in the IDEA or as an English learner does not determine whether a student is a student with the most significant cognitive disabilities;

(B) A student with the most significant cognitive disabilities is not identified solely on the basis of the student's previous low academic achievement, or the student's previous need for accommodations to participate in general BIE assessments; and

(C) A student is identified as having the most significant cognitive disabilities because the student requires extensive, direct individualized instruction and substantial supports to achieve measurable gains on the BIE's challenging academic content standards for the grade in which the student is enrolled;

(ii) Provide to IEP teams a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of BIE and BIE-funded school policies on a student's education resulting from taking an alternate assessment aligned with alternate academic achievement standards, such as how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma.

(4) Ensure that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A))):

(i) That their child's academic achievement will be measured based on the alternate standards; and

(ii) How participation in the assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;

(5) Promote, consistent with the IDEA (20 U.S.C. 1400 *et seq.*), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;

(6) Describe the steps the Bureau has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;

(7) Describe that general and special education teachers, and other appropriate staff:

(i) Know how to administer the alternate assessments; and

(ii) Make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph;

(8) Develop, disseminate information on, and promote the use of appropriate accommodations to increase the number

of students with significant cognitive disabilities:

(i) Participating in academic instruction and assessments for the grade level in which the student is enrolled; and

(ii) Who are tested based on the BIE's challenging academic standards for the grade level in which the student is enrolled; and

(9) Not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.

(b) Responsibility under IDEA. Subject to the authority and requirements for the IEP team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the BIE and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(c)(16)(C)) and paragraph (a)(1) of this section, will determine when a child with a significant cognitive disability shall participate in an alternate assessment aligned with the alternate academic achievement standards.

§ 30.109 How will the Secretary include English learners in content assessments?

(a) *English learners.* English learners must be:

(1) Assessed in a valid and reliable manner; and

(2) Provided appropriate accommodations on assessments administered under this paragraph, including, to the extent practicable, assessments in the language and form most likely to yield accurate data on what the students know and can do in academic content areas, until the students have achieved English language proficiency, consistent with standardized BIE-determined exit procedures.

(b) *Language or form of assessment.* Notwithstanding paragraph (a)(2) of this section, BIE-funded schools must provide for assessments (using tests in English) of reading or language arts of any student who has attended school in the United States for three (3) or more consecutive school years, except that if the BIE-funded school determines, on a case-by-case individual basis, that academic assessments in another language or form would likely yield more accurate and reliable information on what the student knows and can do, the BIE-funded school may make a determination to assess the student in the appropriate language other than English for a period that does not exceed two (2) additional consecutive years, provided that the student has not yet reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on tests (written in English) of reading or language arts. This requirement does not permit either the BIE or BIE-funded schools to exempt English learners from participating in the BIE's assessment system.

(c) *BIE responsibilities.* The BIE must:

(1) Disseminate information and resources regarding English learners to, at a minimum, BIE-funded schools, and parents; and

(2) Promote the use of accommodations for English learners to ensure that all English learners are able to participate in academic instruction and assessments.

(d) *Exception for recently arrived English learners.* With respect to recently arrived English learners who have been enrolled in a school in one of the 50 States in the United States or the District of Columbia for less than twelve (12) months, the BIE may choose to:

(1) Exclude:

(i) The English learner from one administration of the reading or language arts assessment required under § 30.105; and

(ii) The English learner's results on any of the assessments required under § 30.105(b)(5)(i) or § 30.110 for the first year of the English learner's enrollment in the school for the purposes of the BIE-determined accountability system under § 30.111; or

(2) Or the BIE may choose to:

(i) Assess, and report the performance of, the English learner on the reading or language arts and mathematics assessments required under § 30.105(b)(5)(i) in each year of the student's enrollment in such a school; and

(ii) For the purposes of the BIE-determined accountability system:

(A) For the first year of the student's enrollment in the school, exclude the results on the assessments described in paragraph (d)(1)(i) of this section;

(B) Include a measure of student growth on the assessments described in paragraph (d)(1)(i) of this section in the second year of the student's enrollment in the school; and

(C) Include proficiency on the assessments described in paragraph (c) of this section in the third year of the student's enrollment in such a school, and each succeeding year of enrollment.

(e) *English learner subgroup.* With respect to a student previously identified as an English learner and for not more than four (4) years after the student ceases to be identified as an English learner, the BIE may include the results of the student's academic content assessments within the English learner subgroup of the subgroups of students (as defined in § 30.101) for the purposes of the BIE-determined accountability system.

§ 30.110 How will the Secretary ensure BIE-funded schools will provide for annual assessments of English language proficiency for English learners?

(a) The BIE will ensure that BIE-funded schools will provide for an annual assessment of English proficiency of all English learners in the schools served by the BIE.

(b) The BIE will require BIE-funded schools to use the assessments to assess annually the English language proficiency, including reading, writing, speaking, and listening skills, of all English learners in kindergarten through grade twelve (12).

(c) The English language proficiency assessment must be aligned with the BIE's English language proficiency standards described in § 30.104(f).

(d) The assessments will be implemented, developed, and used consistent with the requirements of this section.

(e) The assessments will provide coherent and timely information about each student's attainment of the BIE's English language proficiency standards to parents.

(f) If an English learner has a disability that precludes assessment of the student in one or more domains of the English language proficiency assessment such that there are no appropriate accommodations for the affected domain(s) (*e.g.,* a non-verbal English learner who because of an identified disability cannot take the speaking portion of the assessment), as determined, on an individualized basis, by the student's IEP team, 504 team, or by the individual or team designated by the BIE-funded school to make these decisions under title II of the ADA, then the BIE must assess the student's English language proficiency based on the remaining domains in which it is possible to assess the student.

(g) The BIE must provide for an alternate English language proficiency assessment for each English learner covered under this section who cannot participate in the assessment under this paragraph even with appropriate accommodations.

§ 30.111 How will the Secretary implement requirements for accountability system?

(a) The Secretary will define accountability system for BIE-funded schools consistent with this section and subpart C, including provisions for a single Bureau-wide accountability system and school support and improvement activities, taking into account the unique circumstances and needs of BIE-funded schools and the students served by BIE-funded schools.

(b) To improve student academic achievement and school success among all elementary and secondary schools within the BIE-funded school system, the Secretary will develop and implement a single, Bureau-wide accountability system in consultation with Tribes and stakeholders (parents, educators, etc.) that:

(1) Is based on the Bureau's challenging academic standards and academic assessments;

(2) Is informed by ambitious long-term goals and measurements of interim progress;

(3) Includes all of the accountability indicators described paragraph (f) of this section;

(4) Takes into account the achievement of all elementary and secondary school students within the BIE-funded school system;

(5) Is the same accountability system used to annually, meaningfully differentiate all schools within the BIE-funded school system and the same accountability system used to identify schools for comprehensive and targeted support and improvement;

(6) Includes the process that the Bureau will use to ensure effective development and implementation of school support and improvement plans, including evidence-based interventions, to hold all schools within the BIE-funded school system accountable for student academic achievement and school success; and

(7) Will be reviewed in consultation with Tribes and stakeholders for continuous improvements as necessary, but not less often than every four (4) years beginning on the date the plan is implemented.

(c) The Secretary will incorporate science in the accountability system.

(d) Tribal civics will be phased into the Secretary's requirements for accountability system starting as a school quality indicator and will be revisited as the accountability system is implemented.

(e) For all students and separately for each subgroup of students within the BIE-funded school system, the Bureau's long-term goals and measurements of interim progress will:

(1) Include, at a minimum, improved academic achievement, as measured by proficiency on the Bureau's annual assessments in mathematics and reading or language arts under § 30.105(b)(5)(i), and high school graduation rates, including the four-year adjusted cohort graduation rate and the extended-year adjusted cohort graduation rate, except that the Secretary will set a more rigorous long-term goal for the graduation rate as compared to the long-term goal set for the four-year adjusted cohort graduation rate;

(2) Have the same multi-year length of time set to meet goals for all students and for each subgroup of students within the BIE-funded school system;

(3) Take into account, for subgroups of students who are behind on the measurements of academic achievement and high school graduations rates, the improvement necessary to make significant progress in closing Bureau-wide proficiency and graduation rate gaps; and

(4) Include a measurement of increases in the percentage of English learner students making progress in achieving English language proficiency as defined by the Secretary and measured by the assessments under § 30.105(f) within a timeline determined by the Secretary.

(f) For all students and separately for each subgroup of students within the BIE-funded school system, the Bureau's accountability indicators will at a minimum include distinct indicators for each school that, except for the English language proficiency indicator, will:

(1) Measure performance for all students and separately for each subgroup of students;

(2) Use the same measures within each indicator for all schools within the BIE-funded school system except that measures within the Academic Progress and School Quality or Student success indicators may vary by each grade span; and

(3) Incorporate an Academic Achievement indicator, an Academic Progress indicator, a Graduation rate indicator, a Progress in Achieving English Language Proficiency indicator, and one or more indicators of School Quality or Student Success.

(g) The Bureau's accountability system will annually measure the achievement of at least ninety-five (95) percent of all students, and ninety-five (95) percent of each subgroup of students, who are enrolled in schools within the BIE-funded school system on the Bureau's assessments. The denominator for the purpose of measuring, calculating, and reporting on each indicator shall be the greater of:

(1) Ninety-five (95) percent of all students, or ninety-five (95) percent of each subgroup of students; or

(2) The number of students participating in the assessments.

(h) The performance of students that have not attended the same BIE-funded school for at least half of a school year will not be used in the system of meaningful differentiation of school for that school year, but will be used for the purpose of reporting on the Bureau and school report cards for that school year. In calculating the high school graduation rate, a high school student who has not attended the same school for at least half of a school year and has exited high school without a regular high school diploma and without transferring to another high school that grants a regular high school diploma during such a school year will be assigned to the high school at which the student was enrolled for the greatest proportion of school days while enrolled in grades nine (9) through twelve (12), or to the high school in which the student was most recently enrolled.

Subpart B—Waiver of Requirements, Technical Assistance, and Approval of Proposals for Alternative Requirements

§ 30.112 May a Tribal governing body or school board waive the Secretary's requirements for standards, assessments, and accountability system?

Yes. A Tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and accountability system in part or in whole, and the Tribal governing body or school board's alternative will apply if approved by the Secretary. If the Secretary does not approve the Tribal governing body or school board's alternative proposal, the Secretary's requirements apply.

§ 30.113 How does a Tribal governing body or school board waive the Secretary's requirements?

(a) A Tribal governing body or school board may waive the Secretary's requirements for standards, assessments, and accountability system, in part or in whole.

(b) The Tribal governing body or school board must notify the Secretary and the Secretary of Education of the decision to waive the Secretary's requirements in part or in whole.

(c) Within sixty (60) days of the decision to waive the Secretary's requirements in part or in whole, the Tribal governing body or school board must submit to the Secretary for review, and in coordination with the Secretary

of Education, approval, a proposal for alternative requirements that are consistent with section 1111 of the Act and that take into account the unique circumstances and needs of the school or schools and the students served. The Secretary encourages a Tribal governing body or school board to request and receive technical assistance, consistent with § 30.115, well in advance of submission of a plan to the Secretary for review. The Tribal governing body or school board must continue to follow the Secretary's requirements for standards, assessments and accountability system until a proposal for alternative requirements has been approved and until alternative requirements become effective, except in the case described in paragraph (g) of this section.

(d) A Tribal governing body or school board may request an extension of the sixty (60) day deadline for the provision of technical assistance.

(e) A Tribal governing body or school board must use this process anytime a Tribal governing body or school board proposes alternative requirements for standards, assessments, and accountability system, or proposes changes to approved alternative requirements.

(f) The Secretary will work with the Secretary of Education to develop and make available templates for plans for alternative requirements that Tribal governing bodies and school boards may use to assist in the development of such proposals for alternative requirements.

(g) During the transition to the Secretary's requirements for standards and assessments under this part, or at any time thereafter, a Tribal governing body or school board may elect to use the standards and assessments of a State without submitting such standards and assessments for approval as an alternative proposal under paragraph (c) of this section, provided that the Tribal governing body or school board notifies the Secretary of the intention to use the State standards and assessments and the State agrees to allow the use of its standards and assessments.

§ 30.114 What should a Tribal governing body or school board include in an alternative proposal?

Alternative plans must include an explanation of how the alternative proposal meets the requirements of section 1111 of the Act, taking into consideration the unique circumstances and needs of BIE-funded schools and the students served at such schools.

§ 30.115 May proposed alternative requirements use parts of the Secretary's requirements?

Yes, a Tribal governing body or school board may use the Secretary's requirements in part or in whole. Alternative proposals must clearly identify any retained portions of the Secretary's requirements.

§ 30.116 Will the Secretary provide technical assistance to Tribal governing bodies or school boards seeking to develop alternative requirements?

The Secretary and the Secretary of Education are required by statute to provide technical assistance, upon request, either directly or through contract, to a Tribal governing body or a school board that seeks to develop alternative requirements. A Tribal governing body or school board seeking such assistance must submit a request to the Director. The Secretary will provide such technical assistance on an ongoing and timely basis.

§ 30.117 What is the process for requesting technical assistance?

(a) Requests for technical assistance must be in writing from a Tribal governing body or school board to the Director of BIE.

(b) The Director, or designee, will acknowledge receipt of a request for technical assistance.

(c) No later than thirty (30) days after receiving the original request, the Director will identify a point of contact and begin the process of providing technical assistance. The Director and requesting Tribal governing body or school board will work together to identify the form, substance, and timeline for the assistance.

§ 30.118 When should the Tribal governing body or school board request technical assistance?

A Tribal governing body or school board may request technical assistance at any time. A Tribal governing body or school board is welcomed and encouraged to request technical assistance before formally notifying the Secretary of its intention to waive the requirements established by the Secretary in order to maximize the time available for technical assistance.

§ 30.119 How does the Secretary review and approve alternative requirements?

(a) The Secretary and the Secretary of Education will jointly approve plans for alternative requirements for standards, assessments, and accountability system or determine that the proposed alternative requirements do not meet the requirements of section 1111 of the Act.

(1) The Secretary will consult with the Secretary of Education through the review of a proposal for alternative requirements.

(2) Upon receipt of a proposal for alternative requirements for standards, assessments, and accountability system, in part or in whole, the Secretary will begin coordination with the Secretary of Education on review and approval of the proposal.

(3) The Secretary will provide a status update regarding the processing of the proposal within 120 days of receipt of the proposal and every thirty (30) days thereafter to discuss the stage of the review process.

(b) If the Secretary and the Secretary of Education approve a proposal for alternative requirements, the Secretary will:

(1) Promptly notify the Tribal governing body or school board; and

(2) Indicate the date for which the alternative proposal will be effective.

(c) If a proposal for alternative requirements is not approved, the Tribal governing body or school board will be notified that:

(1) The proposal has not been approved; and

(2) The reasons why the alternative proposal was not approved.

(d) If a proposal for alternative requirements is not approved, the Secretary will provide technical assistance to the Tribal governing body or school board to help to overcome the reasons why the alternative proposal was not approved.

(e) If a proposal for alternative requirements is not approved, or is not moving forward, then Tribes may individually request formal consultation with the Secretary and Secretary of Education.

Subpart C—Support and Improvement

§ 30.120 How will the Secretary implement school support and improvement activities?

The Secretary will notify each BIE-funded school that has been identified for comprehensive support and improvement.

§ 30.121 How will the Secretary implement comprehensive support and improvement?

(a) Once notified that it has been identified for comprehensive support and improvement, each BIE-funded school is required to develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a comprehensive support and improvement plan to improve student outcomes consistent with the Act. The comprehensive support and improvement plan must be approved by the school and the BIE. Once approved

and implemented, the comprehensive support and improvement plan will be monitored and periodically reviewed by the BIE.

(b) In regards to high schools that have been identified as having failed to graduate one-third or more of their students, the BIE may:

(1) Permit differentiated improvement activities that use evidence-based interventions in the case of a school that predominantly serves students:

(i) Returning to education after having exited secondary school without a regular high school diploma, or

(ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements; and

(2) In the case of a school that has a total enrollment of fewer than 100 students, permit the BIE-funded school to forego implementation of improvement activities.

§ 30.122 How will the Secretary implement targeted support and improvement?

(a) Using the system of annual meaningful differentiation of schools, the Secretary will notify each BIE-funded school in which any subgroup of students is consistently underperforming.

(b) Each school that has been notified must develop and implement, in partnership with stakeholders (including principals and other school leaders, teachers, and parents), a school-level targeted support and improvement plan to improve student outcomes based on the BIE's indicators for each subgroup of students that was the subject of such notification consistent with the Act. Targeted support and improvement plans must include evidence-based interventions, will be approved by the BIE prior to implementation, and will be monitored by the BIE upon submission and implementation. Targeted support and improvement plans must result in additional action following unsuccessful implementation of the plan after a number of years as determined by the BIE.

§ 30.123 How will the Secretary implement additional targeted support?

Where a school would be identified for comprehensive support and improvement because, for any subgroup, it is within the lowest-performing five (5) percent of all schools in the BIE system using the BIE's system of annual meaningful differentiation of schools, a school-level targeted support and improvement plan must also identify resource inequities (which may include a review of BIE-funded school level budgeting), to be addressed through implementation of the plan.

§ 30.124 How will the Secretary implement continued support for Bureau-funded schools and school improvement?

(a) The Secretary will establish exit criteria for:

(1) Schools identified for comprehensive support and improvement, which, if not satisfied within a BIE-determined number of years (not to exceed four (4) years), will result in more rigorous BIE-determined action, such as implementation of interventions (which may include addressing school-level operations); and

(2) Schools identified for additional targeted support.

(b) The Secretary will also periodically review resource allocation to support school improvement.

Subpart D—Responsibilities and Accountability

§ 30.125 What is required for the Bureau to meet its reporting responsibilities?

The Bureau is required to prepare and disseminate widely to the public an annual report card for the BIE-funded school system as a whole, and also report cards for individual BIE-funded schools, consistent with the requirements of section 1111(h) of the Act. The BIE's annual report card will be made available on the internet along with all BIE-funded school report cards.

§ 30.126 What information collections have been approved?

The collections of information in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–NEW. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: May 31, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2019–12096 Filed 6–7–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SATS No. IL–109–FOR; Docket ID: OSM–2019–0003 S1D1S SS08011000 SX064A000 190S180110; S2D2S SS08011000 SX064A000 19XS501520]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of the public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are reopening the public comment period and providing an opportunity for a public hearing on a proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) published on May 1, 2019. The public comment period is being reopened and an opportunity for a public hearing is being provided at the request of three Illinois citizen's organizations. The granting of this request affords the public additional time to provide written comment and the opportunity to request to speak at a public hearing.

Illinois proposes revisions to its regulations, including allowing the extraction of coal as an incidental part of a government-financed construction project, revising its Ownership and Control rules, and clarifying land use changes requiring a significant permit revision. Illinois intends to revise its program to be as effective as the Federal regulations.

This document gives the times and locations where the Illinois program documents and this proposed amendment to that program are available for your inspection, establishes the new comment period during which you may submit written comments on the amendment, and describes the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., CDT, June 24, 2019. We will hold a public hearing on the amendment at 5:30 p.m. on June 18, 2019 at our office location listed in **ADDRESSES**. We will accept requests to speak at a hearing until 4:00 p.m., CDT on June 13, 2019.

ADDRESSES: You may submit comments, identified by SATS No. IL–109–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Joy Schieferstein, Acting Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002–6169.
- *Fax:* (618) 463–6470.
- *Federal eRulemaking Portal:* The amendment has been assigned Docket ID OSM–2019–0003. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of the proposed rule published on May 1, 2019 (84 FR 18428).

Docket: For access to the docket to review copies of the Illinois program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Alton Field Division, or the full text of the program amendment is available for you to review at *www.regulations.gov.* Joy Schieferstein, Acting Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002–6169, Telephone: (618) 463–6460, Email: *jschieferstein@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location: Office of Mines and Minerals, Illinois Department of Natural Resources, One Natural Resources Way, Springfield, IL 62702–1271, Telephone: (618) 439–9111.

FOR FURTHER INFORMATION CONTACT: Joy Schieferstein, Acting Chief, Alton Field Division. Telephone: (618) 463–6460, Email: *jschieferstein@osmre.gov.*

SUPPLEMENTARY INFORMATION: On May 1, 2019 (84 FR 18428), we published a proposed rule that would revise the Illinois program. By letter dated December 5, 2018 (Administrative Record No. IL–5100), Illinois sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. By email dated December 11, 2018, Illinois requested that OSMRE's review be put on hold until they could resubmit the proposed amendment due to editorial changes requested by the Illinois Joint Committee on Administrative Rules. Illinois resubmitted the proposed amendment to OSMRE on February 20, 2019. OSMRE will use this date for its review. Below is a summary of the changes proposed by Illinois. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Illinois proposes to revise the Illinois Surface Coal Mining Land Conservation and Reclamation Act (225 ILCS 720), Section 1.06, ''Scope of the Act,'' by adding language allowing coal extraction as an incidental part of a government-financed project. The language added is nearly identical to that found in Section 528 of SMCRA (30 U.S.C. 1278).

Illinois also proposes to revise the following Parts of Title 62 of the Illinois Administrative Code:

Section 1701 Appendix A. Definitions

Illinois proposes to revise its regulation at section 1701 Appendix A, amending a number of its definitions, including those for ''ownership,'' ''control,'' and ''violations,'' to conform with the Federal definitions at 30 CFR 701.5 and 707.5.

Section 1703 Exemption for Coal Extraction Incident to Government-Financed Highway or Other Construction

Illinois proposes adding a new section 1703 to allow the extraction of coal as an incidental part of a government-financed construction project, which incorporates language identical to the Federal regulations at 30 CFR part 707.

Section 1773 Requirements for Permits and Permit Processing

Illinois proposes to amend section 1773.15, ''Review of Permit Applications'' to comport with changes made to the Federal regulations at 30 CFR 773.12. These changes preclude the Department from considering violations upstream of the permit applicant by removing ''person who owns or controls the applicant'' from this section.

Illinois also proposes to amend section 1773.25, ''Standards for Challenging Ownership or Control Links and the Status Violations,'' to update a subsection reference.

Section 1774 Permit Revisions

Illinois proposes to amend section 1774.13, ''Permit Revisions,'' to provide further clarification as to which reclamation plan land use changes require a significant revision for a permit application. Illinois proposes to remove the requirement for a significant revision for land use changes involving greater than five percent of the total permit acreage after finding the five percent limitation to be unduly restrictive and burdensome. Instead, the Department will consider changes in the reclamation plan for post-mining land use in determining whether a significant revision to the permit must be obtained. These changes are proposed in order to make the Illinois rules as effective as the Federal regulations at 30 CFR 774.13.

Section 1778 Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

Illinois proposes adding a new section 1778.9, ''Certifying and Updating Existing Permit Application Information,'' which incorporates language identical to the Federal regulations at 30 CFR 778.9.

Illinois proposes to amend section 1778.13, ''Identification of Interests,'' to comport with changes made to the Federal regulations at 30 CFR 778.11 and 778.12.

Illinois proposes to amend section 1778.14, ''Violation Information,'' to comport with changes made to the Federal regulations at 30 CFR 778.14.

Illinois proposes to amend section 1778.15, ''Right of Entry Information,'' to add language found in the Federal regulations at 30 CFR 778.13 related to property interest information to the existing right of entry language in this section, which corresponds to 30 CFR 778.15, so that all property related rules are located in one section.

During the initial comment period, we received requests from three citizen's organizations (Administrative Record No. IL–5104, IL–5106 and IL–5108) to extend the public comment period and the date to request to testify at a public hearing. Based on that request, we have extended both time periods as described in **DATES** in this notice.

Public Hearing

The hearing will be open to anyone who would like to attend and/or testify. The primary purpose of the public hearing is to obtain your comments on the proposed rule so that we can prepare a complete and objective analysis of the proposal. The purpose of the hearing officer is to conduct the hearing and receive the comments submitted. Comments submitted during the hearing will be responded to in the preamble to the final rule, not at the hearing. If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION**

CONTACT by 4:00 p.m., CDT on June 13, 2019. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. The location of the hearing is our office, listed under **ADDRESSES** above. Those persons requesting to speak will need to register at our office between 5:00 and 5:30 p.m., CDT.

At the hearing, a court report will record and make a written record of the statements presented. This written record will be made part of the administrative record for the rule. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. We appreciate all comments but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to, and analyses of SMCRA, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or relevant publications.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 21, 2019.

Alfred L. Clayborne,

Regional Director, Mid-Continent Region.

[FR Doc. 2019–12084 Filed 6–7–19; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2019–0105; FRL–994–97–Region 9]

Air Plan Approval; Arizona; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOCs) from graphic arts and from coating of wood furniture and fixtures. We are proposing to approve two local rules to regulate these emission sources 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 July 10, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2019–0105 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* 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: Nicole Law or Robert Schwartz, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4126 or (415) 972–3286, *law.nicole@epa.gov* or *schwartz.robert@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the Arizona Department of Environmental Quality.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/amended/revised	Submitted
MCAQD	337	Graphic Arts	08/17/2011	01/15/2014
MCAQD	342	Coating Wood Furniture and Fixtures	11/02/2016	06/22/2017

On March 5, 2014, the EPA determined that the submittal for MCAQD Rule 337 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

On December 22, 2017, the submittal for MCAQD Rule 342 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 these rules?

We approved earlier versions of Rule 337 and Rule 342 into the SIP on February 9, 1998 (63 FR 6489). The MCAQD adopted revisions to the SIP-approved version of Rule 337 on August

17, 2011, and the Arizona Department of Environmental Quality (ADEQ) submitted them to us on January 15, 2014. The MCAQD adopted revisions to the SIP-approved version of Rule 342 on November 2, 2016, and the ADEQ submitted them to us on June 22, 2017.

C. What is the purpose of the submitted rule revisions?

Emissions of VOCs contribute to 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 emissions. The current SIP-approved Rule 337 contains VOC limits for various graphic arts materials and cleaning solutions associated with lithographic printing. It also contains requirements pertaining to labeling, operation and maintenance plans, monitoring, recordkeeping, reporting, and test methods. The submitted revisions expand requirements for specific types of graphic arts operations such as lithographic and letter press operations, rotogravure and flexographic operations, and screen-printing operations. A work practice section was also added describing VOC material use, storage and disposal, and minimization of spills.

The current SIP-approved Rule 342 establishes VOC content limits and workplace standards for all persons involved in the surface preparation and coating of wood furniture and fixtures. Revisions to the SIP-approved rule include the addition of leak detection and repair requirements, annual operator training requirements, and more comprehensive recordkeeping requirements; updates to definitions; revised test methods; and removal of outdated compliance dates and spray gun tagging requirements. The EPA's technical support documents (TSDs) have more information about these rules.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rules?

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).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)). The MCAQD regulates an ozone nonattainment area classified as Moderate for the 2008 8-hour ozone NAAQS (40 CFR 81.303). Therefore, these rules must implement RACT.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations,'' EPA–453/R–96–007, April 1996.
5. ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography,'' EPA–450/2–78–033, December 1978.
6. ''Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing,'' EPA 453/R–06–002, September 2006.

B. Do the rules meet the evaluation criteria?

These rules are consistent with CAA requirements and relevant guidance regarding enforceability, RACT and SIP revisions. The TSDs have more information on our evaluation.

C. The EPA's Recommendations To Further Improve the Rules

The TSDs include recommendations for the next time the local agency modifies the rules.

D. Public Comment and Proposed Action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules because they fulfill all relevant requirements. We will accept comments from the public on this proposal until July 10, 2019. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, 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 MCAQD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region IX Office (please contact the persons 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, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 29, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–12177 Filed 6–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2019–0268; FRL–9994–77–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Incorporation by Reference Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on August 6, 2018. The revisions include an update to incorporate by reference the 2016 version of the Code of Federal Regulations (CFR) and 2015 version of the United States Code (U.S.C.) within the Adminstrative Rules of Montana (ARM) that are part of the Montana SIP. The revisions also include administrative changes that consolidate the ARM's references to the CFR and U.S.C. and remove two CFR exemptions from incorporation by reference into the ARM. Additional revisions remove incorporation by reference of certain EPA standards for which the state already has delegated authority from the EPA, and correct an internal reference in the ARM.

DATES: *Comments:* Written comments must be received on or before July 10, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2019–0268, to the Federal Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Division, 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: Chris Dresser, Air Quality Planning Branch, EPA, Region 8, Mailcode 8ARD–QP, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6385, *dresser.chris@epa.gov.*

I. Background

On September 29, 2017, and February 9, 2018, the Montana Board of Environmental Review conducted public hearings pursuant to 40 CFR 51.102 to consider the adoption of revisions to the ARM. The approved changes were submitted to the EPA for approval into Montana's SIP on August 6, 2018. The SIP submittal includes changes that: (1) Amend ARM 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, and 17.8.1402 to remove repetitive text describing the location of rule reference material and centralize and consolidate those reference citations into sections 17.8.102(3) and (4); (2) Modify air quality rules by correcting an internal reference in ARM 17.8.904; (3) Amend ARM 17.8.102(2), to remove the exemptions of 40 CFR part 63, subparts JJJJJ and KKKKK; (4) Remove references to 40 CFR parts 60, 61, and 63 in sections 17.8.102(2), 17.8.103(1)(f)–(i), 17.8.302(1)(a)–(c), 17.8.767(1)(c)–(d), 17.8.802(1)(c)–(d), 17.8.902(1)(a)–(b), and 17.8.1002(1)(a)–(b), for which Montana is already delegated authority; and (5) Update ARM 17.8.102(1) to incorporate by reference the 2016 version of the CFR and the 2015 version of the U.S.C.

II. Analysis of the State's Submittal

The EPA evaluated the proposed SIP revisions (amendments to the ARM) submitted by the State on August 6, 2018. The subsequent analysis for each rule change in the SIP is as follows:

(1) The State of Montana is requesting that the EPA revise the SIP to remove text in ARM sections 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, and 17.8.1402 describing the location of references to the CFR and U.S.C. The location of rule reference material would be consolidated into ARM sections 17.8.102(3) and (4). Identifying this information once, in the General Provisions of ARM 17.8.102(3) and (4), would eliminate repetition of the information in ARM 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102 and 17.8.1402. The EPA proposes to find that this revision is necessary and appropriate to efficiently describe the location of referenced material.

(2) The State of Montana is requesting to revise the SIP to incorporate an amendment to ARM 17.8.904(7) which corrects an internal reference. In 2011, the State amended the rule, which was submitted to the EPA the following year for inclusion in

the SIP. In January 2016, the EPA identified an incorrect internal reference in ARM 17.8.904(7). This change proposes to amend the text from a reference to ARM 17.8.904(5) to the correct reference to ARM 17.8.904(6). The EPA proposes to find this change necessary and appropriate as it will allow the rule to be properly implemented.

(3) The State of Montana is requesting to revise the SIP to incorporate an amendment to ARM 17.8.102(2) which removes the exemptions for 40 CFR part 63, subparts JJJJJ and KKKKK. Subparts JJJJJ and KKKKK are National Emission Standards for Hazardous Air Pollutants (NESHAP) for brick and structural clay products manufacturing and clay ceramics manufacturing, respectively. Originally adopted into the ARM in 2003, these NESHAPS were vacated and remanded by the Federal Court of Appeals for the District of Columbia Circuit on March 13, 2007, leading to their exemption in the ARM. The EPA addressed the vacatur and remand by issuing new subparts JJJJJ and KKKKK on October 26, 2015. Therefore, the EPA proposes to find it necessary and appropriate to remove the exemptions for JJJJJ and KKKKK; effectively incorporating the most recent federal rules covering emissions from brick and structural clay products manufacturing and clay ceramics manufacturing into Montana's SIP.

(4) The State of Montana is requesting removal from the SIP certain rules that incorporate by reference 40 CFR parts 60, 61, and 63. These rules include: ARM 17.8.103(1)(f)–(i)—pertaining to EPA emission source reference test methods for stationary sources, EPA performance specification and test procedures for continuous emission monitoring systems, EPA emission source reference test methods for sources subject to national emission standards for hazardous air pollutants, and emission standards for hazardous air pollutant source categories; 17.8.302(1)(a)–(c)—pertaining to standards of performance for new stationary sources and modifications, emission standards for hazardous air pollutants; and emission standards for hazardous air pollutant source categories; 17.8.767(1)(c)–(d)—specifying standards of performance for new stationary sources and for hazardous air pollutants; 17.8.802(1)(c)–(d)—specifying standards of performance for new stationary sources and for hazardous air pollutants; 17.8.902(1)(a)–(b)—specifying standards of performance for new stationary sources and for hazardous air pollutants; and 17.8.1002(1)(a)–(b)—specifying standards of performance for new stationary sources and for hazardous air pollutants. Each of these sections references federal requirements for which the State has already received federal delegation of authority. The EPA proposes to find that this update is necessary and appropriate to remove the redundancy. The EPA also proposes to find that removing the previously mentioned references to 40 CFR parts 60, 61, and 63 in the ARM does not impact any other part of the State's SIP (*i.e.,* no other sections of the approved SIP reference the sections that Montana is requesting for removal).

(5) The State of Montana is requesting revisions to the SIP concerning ARM 17.8.102 to update incorporation by reference dates to reflect federal regulations published in the July 1, 2016, edition of the CFR as it is published on the website of the U.S. Government Printing Office, and the 2015 edition of the U.S.C., as it is published on the website of the U.S. Government Printing Office. The EPA proposes to find that this change is necessary and appropriate to cite the 2015 and 2016 versions of the U.S.C. and CFR, respectively.

III. The EPA's Proposed Action

In this action, the EPA is proposing to approve the SIP submittal, containing recent amendments to the ARM, submitted by the State of Montana on August 6, 2018. This action proposes updates to: (1) Amend ARM 17.8.103, 17.8.302, 17.8.602, 17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1102, and 17.8.1402 to remove repetitive text describing the location of rule reference material and centralize and consolidate those reference citations into sections 17.8.102(3) and (4); (2) Modify air quality rules by correcting an internal reference in ARM 17.8.904; (3) Amend ARM 17.8.102(2), to remove the exemptions of 40 CFR part 63, subparts JJJJJ and KKKKK; (4) Remove references to 40 CFR parts 60, 61, and 63 in sections 17.8.102(2), 17.8.103(1)(f)–(i), 17.8.302(1)(a)–(c), 17.8.767(1)(c)–(d), 17.8.802(1)(c)–(d), 17.8.902(1)(a)–(b), and 17.8.1002(1)(a)–(b), for which Montana is already delegated authority; and (5) Update ARM 17.8.102(1) to incorporate by reference the 2016 version of the CFR and the 2015 version of the U.S.C.

IV. Incorporation by Reference

In this rule, 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 amendments described in section II. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: June 4, 2019.

Debra Thomas,

Acting Regional Administrator, EPA Region 8.

[FR Doc. 2019–12156 Filed 6–7–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 84, No. 111

Monday, June 10, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0005]

Environmental Impact Statement for Predator Damage Management in Idaho

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of proposed scope of study.

SUMMARY: The Animal and Plant Health Inspection Service plans to prepare an environmental impact statement (EIS) analyzing alternatives for predator damage management in Idaho. This notice proposes issues and alternatives for consideration in the EIS and requests public comments to further delineate the scope of the alternatives, the environmental issues, and other issues of public concern to be considered.

DATES: We will consider all comments that we receive on or before July 10, 2019.

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

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket?D=APHIS-2019-0005.*
- *Postal Mail/Commercial Delivery:* Send your comment to Project Manager, Idaho Predator Damage Management EIS, USDA APHIS-Wildlife Services, 2150 Centre Avenue, Building B, Mail Stop 3W9, Fort Collins, CO 80526–8117.

Supporting documents and any comments received on this topic may be viewed at *https://www.regulations.gov/docket?D=APHIS-2019-0005* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Kirk Gustad, Idaho Predator Damage EIS Project Manager, USDA-APHIS-Wildlife Services, 2150 Centre Avenue, Building B, Mail Stop 3W9, Fort Collins, CO 80526–8117; phone 970–494–7214.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2019, the Animal and Plant Health Inspection Service (APHIS) published in the **Federal Register** (84 FR 7326, Docket No. APHIS–2019–0005) a notice [1] informing the public of APHIS' intent to prepare an environmental impact statement (EIS) analyzing alternatives for predator damage management (PDM) in Idaho. Predators provide many positive ecological, cultural, economic, and aesthetic benefits. However, they may also be involved in conflicts with humans including preying upon or harassing livestock; damaging other agricultural resources and property; and threatening human health and safety. In limited instances, predation may impede wildlife management agency efforts to enhance populations of prey species such as threatened or endangered species or ungulate populations. Over calendar years 2014–2018, Wildlife Services (WS), a program within APHIS, responded to more than 500 requests per year for information or assistance in reducing conflicts with predators in Idaho. Requests for assistance may come from the public, private entities, other agencies, and Native American Tribes.

APHIS–WS in Idaho currently uses an integrated approach to PDM involving access to the full range of legally available nonlethal and lethal PDM methods to reduce conflicts with coyotes, gray wolves, black bears, grizzly bears, mountain lions, bobcats, red foxes, striped skunks, raccoons, badgers, feral and free-ranging dogs and cats, western spotted skunks, mink, long-tailed weasels, short-tailed weasels, common ravens, black-billed magpies, American crows, bald eagles, and golden eagles. Assistance may be in the form of advice, depredation investigations, information on sources of PDM materials, training and loan of equipment (technical assistance), or hands-on assistance with implementing PDM methods (operational assistance). Methods are applied in accordance with applicable Federal, State, Tribal, and local regulations. Work plans are developed and renewed annually with land management agencies to address specific activities and restrictions required to safely conduct PDM on public lands in a manner consistent with applicable land management agency policies and resource management plans.

Methods used or recommended for use by APHIS–WS may include changes to agricultural practices, capture and relocation, livestock guarding animals, habitat modification, exclusion, frightening devices, avian repellents, carcass disposal, human behavior modification (*e.g.,* trash management and not feeding wildlife), shooting from the ground or from aircraft, denning (only for coyote and fox damage management), gas cartridges (only for coyote and fox damage management), snares, traps, the avicide DRC–1339 (only for raven and magpie damage management), and trained decoy and tracking dogs. Preference is given to practical and effective nonlethal methods, but in some cases concurrent use of nonlethal and lethal methods or immediate use of lethal methods may be the most appropriate solution (*e.g.,* threats to human safety).

APHIS–WS' authorization to provide this service was established by Congress in the Acts of March 2, 1931 (7 U.S.C. 8351–8352), as amended, and December 22, 1987 (7 U.S.C. 8353). APHIS–WS' PDM activities in Idaho also are authorized and coordinated through memoranda of understanding with the Idaho Department of Fish and Game, Idaho State Department of Agriculture, Idaho Wolf Depredation Control Board, Idaho State Animal Damage Control Board, Idaho Department of Lands, the U.S. Forest Service, and the U.S. Department of the Interior's Bureau of Land Management. APHIS–WS' actions also must be conducted in accordance with applicable Federal, State, and Tribal laws, regulations, species management plans, and land management plans.

Proposed Action

APHIS–WS is preparing an EIS to evaluate alternatives for agency

[1] To view the notice, go to *https://www.regulations.gov/docket?D=APHIS-2019-0005.*

involvement in managing damage and conflicts associated with predators in Idaho. Once completed, the EIS will replace APHIS–WS' environmental assessments on predator damage management in Southern Idaho, predator damage management in Northern and Central Idaho, and gray wolf damage management in Idaho.

Scoping

Please review the information in this notice and the supplemental information in our supplement, ''Invitation for Public Involvement,'' which may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and viewed on the *Regulations.gov* website or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). Comments that will assist in further delineating the scope of alternatives, and environmental impacts and other issues of public concern that should be addressed in the analysis are encouraged. Please also submit any scientific data, studies, or research that you feel is relevant to the analysis.

Alternatives

The EIS will consider a range of reasonable alternatives that will include a ''no action'' alternative, which can be defined as a continuation of the ongoing management practices described above, in accordance with the Council on Environmental Quality's regulations for implementing the procedural provisions of the National Environmental Policy Act (NEPA) (7 CFR parts 1500–1508). Suggestions for other alternatives that could be considered are listed below. Additional recommendations for management alternatives to be advanced for detailed analysis are welcome.

- Current integrated PDM activities with PDM activities in Wilderness and Wilderness Study Areas limited to the protection of human health and safety.
- APHIS–WS uses and recommends only nonlethal PDM methods.
- APHIS–WS only uses lethal PDM methods after it is confirmed and recorded that reasonable nonlethal methods were employed by APHIS–WS or the cooperator and were ineffective in resolving the problem.
- Current integrated PDM activities, with the exception that APHIS–WS would not use toxicants for PDM.
- Current integrated PDM activities, but PDM for the protection of natural resources would be limited to protection of species federally listed under the Endangered Species Act.
- Option for the use of M–44s under any alternative that allows for the use of toxicants for PDM. APHIS–WS currently does not use this method in Idaho.

Issues for Detailed Consideration in the Analysis

In considering reasonable alternatives, the EIS will study the effects of the project on environmental issues and other issues of public concern identified as important for understanding the impacts of PDM activities. APHIS–WS and the cooperating agencies have identified the following issues for consideration in the EIS. The public is encouraged to submit comments identifying other issues that should be considered.

- Impacts on State and regional predator populations;
- Effects on nontarget animal populations including species federally listed under the Endangered Species Act;
- Impacts of the alternatives on predator-prey relationships and ecosystem processes (*e.g.,* trophic cascades);
- Impacts on Special Management Areas, including Wilderness and Wilderness Study Areas;
- Humaneness and ethical perspectives regarding actions proposed in the alternatives;
- Effects on recreation and people's aesthetic enjoyment of wildlife, including hunting and non-consumptive uses;
- Impacts of the alternatives on Native American culture and resource uses;
- Economic costs and benefits of the proposed alternatives; and
- Risks and benefits to human and pet safety from PDM activities.

After the comment period closes, APHIS–WS will review and consider all comments received during the comment period and any other relevant information in the development of the EIS. All comments received will be available for public review as required and allowed by law. Upon completion of the draft EIS, a notice announcing its availability and an opportunity to comment will be published in the **Federal Register**.

The EIS will be prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 4th day of June 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–12066 Filed 6–7–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2019–0016]

Addition of Mongolia to the List of Regions Affected by African Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have added Mongolia to the list of regions that the Animal and Plant Health Inspection Service considers to be affected with African swine fever (ASF). We are taking this action because of the confirmation of ASF in Mongolia.

DATES: Mongolia was added to the APHIS list of regions considered affected with ASF on January 10, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Gordon, Import Risk Analyst, Strategy and Policy, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7741; email: *Rebecca.k.gordon@usda.gov.*

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive diseases of ruminants and swine.

Section 94.8(a)(3) of the regulations states that the Animal and Plant Health Inspection Service (APHIS) will consider a region to have ASF and add it to the list referenced in § 94.8(a)(2) upon determining ASF exists in the region, based on reports APHIS receives of outbreaks of the disease from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable.

ASF is a highly contagious disease of wild and domestic swine that can spread rapidly in swine populations

with extremely high rates of morbidity and mortality. A list of regions where ASF exists or is reasonably believed to exist is maintained on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions/.*

In a report dated January 15, 2019, the veterinary authorities of Mongolia reported to the OIE confirmation of an ASF outbreak on January 10, 2019. Therefore, in response to this outbreak, APHIS has added Mongolia to the list of regions where ASF exists or is reasonably believed to exist.

Although the importation of most swine commodities from Mongolia into the United States is already restricted based on that country's classical swine fever, foot-and-mouth disease, and swine vesicular disease status, APHIS has determined that it is necessary to impose ASF-related restrictions on the importation of pork and pork products from Mongolia into the United States.

As a result, pork and pork products from Mongolia, including casings, are subject to APHIS import restrictions designed to mitigate the risk of ASF introduction into the United States.

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 4th day of June 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–12067 Filed 6–7–19; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene at 12:00 p.m. (MDT) on Thursday, June 27, 2019 via teleconference. The purpose of the meeting is review and vote on an Advisory Memorandum to wrap up the Committee's work on subtle racism in South Dakota.

DATES: Thursday, June 27, 2019, at 12:00 p.m. (MDT)

ADDRESSES: To be held via teleconference: 1–800–458–4121, Conference ID: 4148595.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, *ebohor@usccr.gov,* 303–866–1040.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–800–458–4121; Conference ID: 4148595. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–877–8339 and provide the FRS operator with Conference Call Toll-Free Number: 1–800–458–4121; Conference ID: 4148595. Members of the public are invited to submit written comments; the comments must be received in the regional office by Monday, July 29, 2019. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzm5AAA* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Agenda:

Thursday, June 27, 2019 (12:00 p.m.–MDT)

- Roll-call
- Review and vote on Advisory Memorandum
- Public Comment
- Adjourn

Dated: June 5, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–12102 Filed 6–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) continues to find that Tianjin Magnesium International, Co., Ltd. (TMI) and Tianjin Magnesium Metal Co., Ltd. (TMM) had no shipments of subject merchandise covered by the antidumping duty order on magnesium metal from the People's Republic of China (China) for the period of review (POR) April 1, 2017, through March 31, 2018.

DATES: Applicable June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Kyle Clahane or Brendan Quinn, 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) 482–5449 or (202) 482–5848, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2019, Commerce published the *Preliminary Results.*[1] We invited interested parties to comment on the *Preliminary Results,* but no comments were received. Accordingly, we made no changes to the *Preliminary Results.*

Commerce conducted this review in accordance with section 751(a)(1)(B) of

[1] *See Magnesium Metal from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 1048 (February 1, 2019) (*Preliminary Results*).

the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by this antidumping duty order is magnesium metal from China, which includes primary and secondary 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 order includes blends of primary and secondary magnesium.

The subject merchandise includes the following alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [2] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

The scope of this order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy''; [3] (2) magnesium that is in liquid or molten form; and (3) 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, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[4]

The merchandise subject to this order is classifiable under items 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 is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that TMI and TMM had no shipments of the subject merchandise, and, therefore, no reviewable transactions, during the POR.[5] As we have not received any information to contradict our preliminary finding, we continue to find that TMI and TMM did not have any shipments of subject merchandise during the POR and intend to issue appropriate instructions that are consistent with our ''automatic assessment'' clarification, for these final results.[6]

Assessment Rates

Commerce determined, 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). Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

Additionally, consistent with Commerce's refinement to its assessment practice in non-market economy cases, for TMI and TMM, the exporters under review, which we determined had no shipments of the subject merchandise during the POR, any suspended entries of subject merchandise from these companies (*i.e.,* made under TMI's case number at TMI's rate or made under TMM's name) will be liquidated at the China-wide rate.[7]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, including TMI, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, including TMM, the cash deposit rate will be the China-wide rate of 141.49 percent; [8] and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter. 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 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 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 disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or

[2] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[3] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[4] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); and *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

[5] *See Preliminary Results,* 84 FR at 1049.

[6] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*Assessment Notice*); *see also* ''Assessment Rates'' section below.

[7] For a full discussion of this practice, see *Assessment Notice.*

[8] *See Notice of Antidumping Duty Order: Magnesium Metal from the People's Republic of China,* 70 FR 19928 (April 15, 2005).

conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–12130 Filed 6–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–985]

Xanthan Gum From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Preliminary Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that xanthan gum from the People's Republic of China (China) is being sold in the United States at less than fair value (LTFV). The period of review (POR) is July 1, 2017, through June 30, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis or Thomas Hanna, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147 or (202) 482–0835, respectively.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On July 3, 2018, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on xanthan gum from China.[1] Commerce published the notice of initiation of this administrative review on September 10, 2018.[2] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the closure of the federal government from December 22, 2018, through January 28, 2019.[3] Commerce extended the preliminary results deadline until June 5, 2019.[4] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included in the appendix 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 *https://access.trade.gov,* and 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 the electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The product covered by this order is dry xanthan gum, whether or not coated or blended with other products, from China. For a complete description of the scope of this order, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

On September 25, 2017, and October 9, 2018, Shanghai Smart Chemicals Co., Ltd. (Shanghai Smart), Jianlong Biotechnology Co., Ltd. (Jianlong), and Inner Mongolia Jianlong Biochemical Co., Ltd. (IMJ), respectively, timely filed certifications that they had no exports, sales, or entries of subject merchandise during the POR. Based on an analysis of the U.S. Customs and Border Protection (CBP) information and Shanghai Smart, Jianlong's, and IMJ's, no shipment certifications, Commerce preliminarily determines that Shanghai Smart, Jianlong, and IMJ had no shipments and, therefore, no reviewable transactions, during the POR.[6] For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in non-market economy (NME) cases, Commerce is not rescinding this administrative review with respect to Shanghai Smart, Jianlong, or IMJ, for which it has preliminarily found no shipments during the POR, but intends to complete the review, and issue appropriate instructions to CBP based on the final results of the review.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated, where applicable, export price and constructed export price for the mandatory respondents Deosen Biochemical (Ordos) Ltd. and Deosen Biochemical Ltd. (collectively Deosen), and Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. (collectively Meihua) in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our results, *see* the Preliminary Decision Memorandum.

Single Entity Treatment

Consistent with prior segments of this proceeding, we have continued to treat Deosen Biochemical (Ordos) Ltd. and Deosen Biochemical Ltd. as a single entity; and Meihua Group International Trading (Hong Kong) Limited, Langfang Meihua Biotechnology Co., Ltd., and Xinjiang Meihua Amino Acid Co., Ltd. as a single entity, pursuant to 19 CFR 351.401(f)(1)–(2). For additional information, *see* the Preliminary Decision Memorandum.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 31121 (July 3, 2018).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 45596 (September 10, 2018).

[3] *See* Memorandum to Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019.

[4] *See* Memorandum, ''Xanthan Gum from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated May 7, 2019.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the Fifth Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China,'' (Preliminary Decision Memorandum), dated concurrently with, and hereby adopted by, this notice.

[6] *See* Memorandum to the File, ''Antidumping Duty Administrative Review of Xanthan Gum from the People's Republic of China: Automated Commercial System Shipment Query,'' dated September 15, 2017; *see also* Memorandum to the File, ''Xanthan gum from China (A–570–985),'' dated June 14, 2018.

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (*NME AD Assessment*); and the ''Assessment Rates'' section, below.

Separate Rates

Commerce preliminary determines that the information placed on the record by Deosen, Meihua, and the other companies listed in the rate table below demonstrates that these companies are entitled to separate rate status. However, we preliminarily determine that Hebei Xinhe Biochemical Co., Ltd. and A.H.A. International Co., Ltd. did not demonstrate their entitlement to separate rates status. Therefore, we are preliminarily treating Hebei Xinhe Biochemical Co., Ltd. and A.H.A. International Co., Ltd. as part of the China-wide entity. For additional information, *see* the Preliminary Decision Memorandum.

Dumping Margins for Separate Rate Companies

The statute and Commerce's regulations do not address what rate to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for non-selected respondents that are not examined individually in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually-examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available. Where the rates for the individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate. We preliminarily assigned the respondents not selected for individual examination to which we granted a separate rate the dumping margin calculated for Deosen.

Preliminary Dumping Margins

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period July 1, 2017, through June 30, 2018:

Exporter	Weighted-average dumping margin (percent)
Deosen Biochemical Ltd./Deosen Biochemical (Ordos) Ltd	45.65
Meihua Group International Trading (Hong Kong) Limited/Langfang Meihua Biotechnology Co., Ltd.,/Xinjiang Meihua Amino Acid Co., Ltd	0.00
CP Kelco (Shandong) Biological Company Limited	45.65

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than 30 days after the publication of these preliminary results of review, unless the Secretary alters the time limit.[8] Rebuttal briefs, limited to responding to issues raised in case briefs, may be submitted no later than five days after the deadline for case briefs.[9] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, 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.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[10] Commerce intends to issue appropriate assessment instructions to CBP 15 days after the publication of the final results of this review. We will calculate importer-specific assessment rates equal to the ratio of the total amount of dumping calculated for examined sales with a particular importer to the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[11] Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[12] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents that were not selected for individual examination in this administrative review, but which qualified for a separate rate, the assessment rate will be based on the weighted-average dumping margin(s) assigned to the respondent(s), as appropriate, in the final results of this review.[13]

For entries that were not reported in the U.S. sales databases submitted by the companies individually examined during this review, Commerce will

[8] *See* 19 CFR 351.309(c).

[9] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[10] *See* 19 CFR 351.212(b)(1).

[11] We 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).

[12] *See* 19 CFR 351.106(c)(2).

[13] *See Drawn Stainless Steel Sinks from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments: 2014–2015,* 81 FR 29528 (May 12, 2016) and accompanying Issues and Decision Memorandum at 10–11; unchanged in *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2014–2015,* 81 FR 54042 (August 15, 2016).

instruct CBP to liquidate such entries at the China-wide rate. In addition, if we continue to find that Shanghai Smart, Jianlong, and IMJ had no shipments of subject merchandise during the POR, any suspended entries of subject merchandise from either Shanghai Smart, Jianlong, and IMJ will be liquidated at the China-wide rate.[14]

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of xanthan gum from China entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be required); (2) for previously investigated or reviewed China and non-China exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all China exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity, which is 154.07 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these preliminary results of review in accordance with sections 751(a)(l) and 777(i)(l) of the Act and 19 CFR 351.213.

Dated: June 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

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[FR Doc. 2019–12149 Filed 6–7–19; 8:45 am]

BILLING CODE 3510–DS–P

[14] For a full discussion of this practice, *see NME AD Assessment.*

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of NAFTA requests for Panel Review in the matter Light-Walled Rectangular Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review (Secretariat File Number: USA–MEX–2019–1904–01).

SUMMARY: A Request for Panel Review was filed on behalf of Maquilacero S.A. de C.V. (''Maquilacero'') and Perfiles LM, S.A. de C.V. (''Perfiles'') with the United States Section of the NAFTA Secretariat on May 22, 2019, pursuant to NAFTA Article 1904. Panel Review was requested of the Department of Commerce's final antidumping duty determination regarding Light-Walled Rectangular Pipe and Tube from Mexico. The final determination was published in the **Federal Register** on April 22, 2019. The NAFTA Secretariat has assigned case number USA–MEX–2019–1904–01 to this request.

FOR FURTHER INFORMATION CONTACT: Paul E. Morris, United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established NAFTA Rules of Procedure for Article 1904 Binational Panel Reviews, which were adopted by the three governments for panels requested pursuant to Article 1904(2) of NAFTA which requires Requests for Panel Review to be published in accordance with Rule 35. For the complete Rules, please see *https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/Rules-of-Procedure/Article-1904.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 21, 2019);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline

for filing a Notice of Appearance is July 8, 2019); and

(c) The panel review shall be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: June 4, 2019.

Paul E. Morris,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2019–12100 Filed 6–7–19; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–990, A–201–843]

Prestressed Concrete Steel Rail Tie Wire From Mexico and the People's Republic of China: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 1, 2019, the Department of Commerce (Commerce) initiated the sunset reviews of the antidumping duty orders on prestressed concrete steel rail tie wire (PC tie wire) from Mexico and the People's Republic of China (China). Because the domestic interested parties did not participate in these sunset reviews, Commerce is revoking these antidumping duty orders.

DATES: Applicable June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–2285.

SUPPLEMENTARY INFORMATION:

Background

On June 24, 2014, Commerce issued antidumping duty orders on PC tie wire from Mexico and China.[1] On May 1, 2019, Commerce initiated the first sunset reviews on these orders pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.218.[2]

We did not receive a notice of intent to participate from domestic interested parties in either sunset review by the deadline date.[3] As a result, Commerce determined that no domestic interested party intends to participate in the sunset reviews.[4] Pursuant to 19 CFR 351.218(d)(1)(iii)(B)(2), on May 21, 2019, we notified the International Trade Commission in writing that we intended to issue a final determination revoking the antidumping duty orders on PC tie wire from Mexico and China.[5]

Scope of the Orders

The products covered by these orders are high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the physical, mechanical, and chemical requirements of the American Society of Testing Materials (ASTM) A881/A881M specification; regardless of shape, size, or other alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (''PC tie wire''). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.8090, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, 7229.90.9000 and 7312.10.3012. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Revocation

Pursuant to section 751(c)(3)(A) of the Act, and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested parties respond to a notice of initiation, Commerce shall, within 90 days after the date of publication of the notice of initiation of the review, revoke the order. Because no domestic interested party filed a notice of intent to participate in these sunset reviews, we are revoking these antidumping duty orders on PC tie wire from Mexico and China.

Effective Date of Revocation

Pursuant to sections 751(c)(3)(A) and 751(c)(6)(A)(iii) of the Act and 19 CFR 351.222(i)(2)(i), Commerce intends to instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of, and discontinue the collection of AD cash deposits on, the merchandise subject to the antidumping duty orders on PC tie wire from Mexico and China entered, or withdrawn from warehouse, on or after June 24, 2019, the fifth anniversary of the date on which Commerce published in the **Federal Register** notice of these antidumping duty orders.[6] Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. Commerce will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year (sunset) reviews and this notice are issued and published in accordance with sections 751(c) and 777(i)(1) of the Act, and 19 CFR 351.218(f)(4).

Dated: June 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–12133 Filed 6–7–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–853]

Certain Crystalline Silicon Photovoltaic Products From Taiwan: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that United Renewable Energy Co., Ltd. (URE) is the successor-in-interest to Gintech Energy Corporation (Gintech), Neo Solar Power Corporation (Neo Solar), and Solartech Energy Corporation (Solartech). If these preliminary results are adopted in our final results, we will assign URE the cash deposit rate assigned to Gintech, Neo Solar, and Solartech. We invite parties to comment on these preliminary results.

DATES: Applicable June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Galantucci, AD/CVD Operations,

[1] *See Prestressed Concrete Steel Rail Tie Wire from Mexico and the People's Republic of China: Antidumping Duty Orders,* 79 FR 35727 (June 24, 2014) (*PC Tie Wire from Mexico and PRC Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews, 84 FR 18477* (May 1, 2019).

[3] *See* 19 CFR 351.218(d)(1)(i).

[4] *See* 19 CFR 351.218(d)(1)(iii)(A).

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on May 1, 2019,'' dated May 21, 2019.

[6] *See PC Tie Wire from Mexico and PRC Orders.*

Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2923.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2015, Commerce published in the **Federal Register** an antidumping duty order on certain crystalline silicon photovoltaic products (solar products) from Taiwan.[1] On February 1, 2019, Commerce received a request on behalf of URE for an expedited changed circumstances review (CCR) to determine whether URE is the successor-in-interest to Gintech, Neo Solar, and Solartech.[2] On March 26, 2019, we initiated a CCR and published notice in the **Federal Register**.[3]

On April 10, 2019, SunPower Manufacturing Oregon LLC, a domestic producer of subject merchandise and successor to SolarWorld Americas (the petitioner), filed a letter in support of an affirmative successor-in-interest determination.[4] We received no additional comments on URE's CCR request.

Scope of the Order

The merchandise covered by this order is crystalline silicon photovoltaic cells, and modules, laminates and/or panels consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including building integrated materials.

Merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.6020, 8541.40.6030 and 8501.31.8000. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the order is dispositive. For a full description of the scope of the order, please refer to the accompanying Preliminary Decision Memorandum.[5]

Methodology

We are conducting this CCR in accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our analysis, please refer to the accompanying Preliminary Decision Memorandum. For a list of topics addressed in the Preliminary Decision Memorandum, please see the Appendix to this notice.

Preliminary Results of Changed Circumstances Review

In accordance with 19 CFR 351.216, we preliminarily determine that URE is the successor-in-interest to Gintech, Neo Solar, and Solartech. Record evidence indicates that URE's management, board of directors and ownership are materially similar to those of Gintech, Neo Solar, and Solartech prior to their merger. Moreover, we preliminarily find that URE assumed the production facilities of Gintech, Neo Solar, and Solartech, and substantially assumed the supplier relationships and customer base of the predecessor companies. For the complete successor-in-interest analysis, please refer to the accompanying Preliminary Decision Memorandum.

Furthermore, we preliminarily determine that, as the successor-in-interest to Gintech, Neo Solar, and Solartech, URE should receive the same antidumping duty treatment with respect to the subject merchandise as Gintech, Neo Solar, and Solartech. If we continue to reach the same determination for the final results of this CCR, we will assign URE the cash deposit rate assigned to Gintech, Neo Solar, and Solartech, effective on the publication date of the final results in the **Federal Register**. At that time, we will instruct U.S. Customs and Border Protection (CBP) to collect the cash deposits accordingly.

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 10 days of publication of this notice in the **Federal Register**. In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 10 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs, in accordance with 19 CFR 351.309(d). Parties who submit case or rebuttal briefs 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. All comments are to be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024, of the main Department of Commerce building. An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.[6]

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

This notice is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216(b), 351.221(b), and 351.221(c)(3).

Dated: June 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Results of Changed Circumstances Review
V. Recommendation

[FR Doc. 2019–12132 Filed 6–7–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–820; A–560–812; A–570–865; A–583–835; A–549–817; A–823–811]

Certain Hot-Rolled Carbon Steel Flat Products From India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 10, 2019.

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[1] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order,* 80 FR 8596 (February 18, 2015).

[2] *See* URE's Letter, ''Certain Crystalline Silicon Photovoltaic Products from Taiwan: Request for Changed Circumstances Review and Successor-in-Interest Determination,'' dated February 1, 2019 (CCR Request).

[3] *See Certain Crystalline Silicon Photovoltaic Products from Taiwan: Initiation of Antidumping Duty Changed Circumstances Review,* 84 FR 11284 (March 26, 2019).

[4] *See* the petitioner's Letter, ''Certain Crystalline Silicon Photovoltaic Products from Taiwan: Support for Successor-in-Interest Determination Requested by United Renewable Energy Co. Ltd.,'' dated April 10, 2019.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Changed Circumstances Review: Certain Crystalline Silicon Photovoltaic Products from Taiwan,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[6] *See* 19 CFR 351.303(b).

SUMMARY: As a result of these sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty orders on certain hot-rolled carbon steel flat products from India, Indonesia, the People's Republic of China (China), Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of dumping. The magnitude of the dumping margins likely to prevail are indicated in the ''Final Results of Sunset Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich, AD/CVD Operations, Office VI, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1979.

SUPPLEMENTARY INFORMATION:

Background

In 2001, Commerce published in the **Federal Register** the *AD Orders* with respect to certain hot-rolled carbon steel flat products from India, Indonesia, China, Taiwan, Thailand, and Ukraine.[1] On December 5, 2006 and February 7, 2014, Commerce published notices of continuation of these *AD Orders*.[2] On February 5, 2019, Commerce published the notice of initiation of the third sunset reviews of the *AD Orders* on certain hot-rolled carbon steel flat products from India, Indonesia, China, Taiwan, Thailand, and Ukraine.[3]

On March 7, 2019, Commerce received complete substantive responses to the notices of initiation from Nucor Corporation; AK Steel Corporation; ArcelorMittal USA LLC; United States Steel Corporation; California Steel Industries; SSAB Enterprises LLC; and Steel Dynamics, Inc. (collectively, the domestic interested parties) within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers of a domestic like product in the United States. Commerce received comments from the Government of Ukraine,[4] but received no substantive responses from any other interested parties. As a result, Commerce conducted an expedited, *i.e.,* 120-day, sunset review of these *AD Orders* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Scope of the Orders

The merchandise subject to the *AD Orders* is certain hot-rolled carbon steel flat products. For a complete description of the products covered, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in these reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation, and the magnitude of dumping margins likely to prevail if the orders were revoked, are addressed in the accompanying Issues and Decision Memorandum dated concurrently with, and hereby adopted by, this notice. A list of the topics discussed in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document, which 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 in Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://trade.gov/enforcement/*. The signed and electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty orders on certain hot-rolled carbon steel flat products from India, Indonesia, China, Taiwan, Thailand, and Ukraine would be likely to lead to continuation or recurrence of dumping. We determine that the weighted-average dumping margins likely to prevail are up to the following percentages:

Country	Weighted-average margin (percent)
India	44.40
Indonesia	47.86
China	90.83
Taiwan	29.14
Thailand	20.30
Ukraine	90.33

Notification to Interested Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the 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.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: June 5, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scopes of the Orders
IV. History of the Orders
V. Legal Framework
VI. Discussion of the Issues
1. The Adequacy of the Government of Ukraine's Response
2. Likelihood of Continuation or Recurrence of Dumping
3. Magnitude of the Dumping Margins Likely to Prevail
VII. Final Results of Review
VIII. Recommendation

[FR Doc. 2019–12147 Filed 6–7–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from India,* 66 FR 60194 (December 3, 2001) (*India Amended Final Determination and Order*); *see also Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia,* 66 FR 60192 (December 3, 2001); *Notice of Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China,* 66 FR 59561 (November 29, 2001); *Notice of Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products from Taiwan,* 66 FR 59563 (November 29, 2001); *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 66 FR 59562 (November 29, 2001); and *Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine,* 66 FR 59559 (November 29, 2001) (collectively, *AD Orders*).

[2] *See Certain Hot-Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders,* 71 FR 70506 (December 5, 2006) (*First Sunset Review*); *see also Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine: Continuation of Antidumping and Countervailing Duty Orders,* 79 FR 7425 (February 7, 2014) (*Second Sunset Review*).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 1705 (February 5, 2019) (*Initiation*).

[4] *See* Issues and Decision Memorandum: Final Results of Expedited Third Sunset Reviews of the Antidumping Duty Orders on Certain Hot-Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine (Issues and Decisions Memorandum), dated June 5, 2019 at 20. Commerce did not find the Government of Ukraine's comments to be an adequate substantive response.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–863]

Certain Corrosion-Resistant Steel Products From India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain corrosion-resistant steel products (CORE) from India are being, or are likely to be sold, at less than normal value during the period of review (POR) July 1, 2017, through June 30, 2018.

DATES: Applicable June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Rachel Greenberg or Kabir Archuletta, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0652 or (202) 482–2593, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on CORE from India on February 1, 2019.[1] We invited interested parties to comment on the *Preliminary Results.* On March 4, 2019, Commerce received a timely-filed case brief from Uttam Galva Steels Limited (Uttam Galva). On March 11, 2019, Commerce received a timely-filed rebuttal brief from California Steel Industries and Steel Dynamics Inc. (collectively, the petitioners). Commerce conducted this administrative review of the antidumping duty order on CORE from India in accordance with sections 751(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act).[2]

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.[3] 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 is now June 3, 2019.

Scope of the Order

The product covered by this review is CORE from India. For a full description of the scope, see the Issues and Decision Memorandum dated concurrently with, and hereby adopted by, this notice.[4]

Final Determination of No Shipments

In the *Preliminary Results,* we found that JSW Steel Ltd. and JSW Coated Products Ltd. (collectively, JSW), had no shipments during the POR. Following the publication of the *Preliminary Results,* we received no comments from interested parties regarding this company, nor has any party submitted record evidence which would call this finding into question. Therefore, for the final results, we continue to find that JSW had no shipments during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by JSW, but exported by other parties without their own rate, at the all-others rate.[5]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[6] A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly 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 record and comments received from interested parties regarding our *Preliminary Results,* Commerce has made no changes to the *Preliminary Results.* As stated in the *Preliminary Results,* we found that the application of facts otherwise available with adverse inferences, for Uttam Galva's dumping margin, pursuant to sections 776(a) and (b) of the Act, was warranted. For further discussion, *see* the Issues and Decision Memorandum.

Final Results of the Review

We determine that, for the period of July 1, 2017, through June 30, 2018, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
Uttam Galva Steels Limited[7]	71.09

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final determination within five days after the date of any public announcement, in accordance with 19 CFR 351.224(b). However, the final dumping margin assigned to Uttam Galva is based on adverse facts available with adverse inferences. Accordingly, no disclosure of calculations is necessary for these final results.

Assessment Rate

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce shall instruct CBP to

[1] *See Certain Corrosion-Resistant Steel Products from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 1061 (February 1, 2019) (*Preliminary Results*).

[2] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016) (*Order*).

[3] *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.

[4] *See* Memorandum, ''Certain Corrosion-Resistant Steel Products from India: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

[6] *See* Issues and Decision Memorandum.

[7] This rate also applies to: Atlantis International Services Company Ltd., Uttam Galva Steels (BVI) Limited, Uttam Galva Steels, Netherlands B.V., and Uttam Value Steels Limited. In the investigation, Commerce found these companies to be a single entity.

apply an *ad valorem* assessment rate of 71.09 percent to all entries of subject merchandise during the POR which were produced and/or exported by Uttam Galva.

We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Uttam Galva will be the rate established in the final results of this administrative 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; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 0.00 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

[8] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390, 48393 (July 25, 2016).

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under 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 the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: June 3, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. List of Comments
III. Background
IV. Scope of the Order
V. Determination of No Shipments
VI. Discussion of the Issue
  Comment: AFA Rate Applied to Uttam Galva
VII. Recommendation

[FR Doc. 2019–12148 Filed 6–7–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0020]

Proposed Collection; Comment Request

AGENCY: Army & Air Force Exchange Service (Exchange), DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Army & Air Force Exchange Service (Exchange) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army & Air Force Exchange Service, Office of the General Counsel, Compliance Division, ATTN: Teresa Schreurs, Privacy Manager, 3911 South Walton Walker Blvd., Dallas, TX 75236–1598 or call the Exchange Compliance Division at 800–967–6067.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Accident/Incident Reports; Exchange Form 3900–017, ''Statements''; OMB Control 0720–0138.

Needs and Uses: The information collection requirement is necessary to record incidents such as accidents, mishaps, fires, thefts or any issue involving government property. This collection ensures the Exchange has the necessary information regarding injuries and illnesses in order to administer and

follow-up on medical treatment and payment of claims. The collection also assists the Exchange in recouping damages, correcting deficiencies, initiating appropriate disciplinary action(s), filing insurance and Workers' Compensation required documents.

Affected Public: Individuals or Households, Business or other for profit; Not-for-profit institutions, and Federal Government.

Annual Burden Hours: 13,914.

Number of Respondents: 13,914.

Responses per Respondent: 1.

Annual Responses: 13,914.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

Respondents are Exchange employees, family members, customers, guests, visitors, and members of the public who have been involved in incidences relative to damage to Exchange property or facilities, have been suspected of shoplifting or theft, have been injured, or developed an illness on any incident occurring at Exchange facilities.

Dated: June 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12142 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2019–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 10, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* Exchange Security Clearance Process for Contractors/Vendor Personnel; Exchange Form 3900–013 ''Electronic Questionnaires for Investigations Processing (e-QIP) request'', Exchange Form 3900–002 ''Trusted Associate Sponsorship System (TASS Request Form)'', Exchange Form 3900–006 ''Background Check for Vendors/Contractors''; OMB Control Number 0702–0135.

Type of Request: Extension.

Number of Respondents: 2,900.

Responses per Respondent: 1.

Annual Responses: 2,900.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,450.

Needs and Uses: The information collection requirement is necessary for the processing of all Army and Air Force Exchange Service security clearance actions, to record security clearances issued or denied, and to verify eligibility for access to classified information or assignments to sensitive positions.

Affected Public: Individuals and/or Households; Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

Dated: June 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12117 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2018–OS–0057]

Submission for OMB Review; Comment Request

AGENCY: Office of the Chief Management Officer (CMO), DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 10, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil*.

SUPPLEMENTARY INFORMATION: *Title; Associated Form; and OMB Number:* PFPA Recruitment, Medical, and Fitness Forms; PFPA Form 1400, PFPA Form 6040, PFPA Form 1407, PFPA Form 1410, PFPA Form 1408, PFPA Form 1409; OMB Control Number 0704–XXXX.

Type of Request: New.

Information Being Collected from Applicants (PFPA Form 1400, PFPA Form 6040).

Affected Public: Individuals and Households.

Annual Burden Hours: 220.

Number of Respondents: 240.

Responses Per Respondent: 3.

Annual Responses: 720.

Average Burden Per Response: 18.33 minutes.

Frequency: As required.

Information Being Collected from Former Supervisors (PFPA Form 1407 and PFPA Form 1410).

Affected Public: Individuals and Households.

Annual Burden Hours: 240.

Number Of Respondents: 1920.

Responses Per Respondent: 1.

Annual Responses: 1920.

Average Burden Per Response: 7.5 minutes.

Information Being Collected from References (PFPA Form 1409).

Affected Public: Individuals and Households.

Annual Burden Hours: 160.

Number Of Respondents: 960.

Responses Per Respondent: 1.

Annual Responses: 960.

Average Burden Per Response: 10 minutes.

Information Being Collected from Other Law Enforcement Agencies (PFPA Form 1408).

Affected Public: Individuals and Households.

Annual Burden Hours: 20.

Number Of Respondents: 240.

Responses Per Respondent: 1.

Annual Responses: 240.

Average Burden Per Response: 5 minutes.

Needs and Uses: This information collection is essential to PFPA and is used to make a determination of fitness for federal employment in the field of law enforcement. To that end, criminal, background and medical information is collected on the applicants.

Affected Public: Individuals and Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12122 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2019–HA–0065]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Suite 5101, Falls Church, VA 22042–5101, ATTN: Melanie Richardson, or call 703.681.8494.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Federal Agency Retail Pharmacy Program; OMB Control Number 0720–0032.

Needs and Uses: The information collection requirement is necessary to obtain and record refund amounts between the DoD and pharmaceutical manufacturers. The DoD quarterly provides pharmaceutical manufacturers with itemized utilization data on covered drugs dispensed to TRICARE beneficiaries through TRICARE retail network pharmacies. These manufacturers validate the refund amounts calculated from the difference in price between the Federal Ceiling Prices and the direct commercial contract sales price. Once the refund amounts are validated, the pharmaceutical manufacturers directly pay the DHA Government account.

Affected Public: Business or other for profit.

Annual Burden Hours: 9,600.

Number of Respondents: 300.

Responses per Respondent: 4.

Annual Responses: 1,200.

Average Burden per Response: 8 hours.

Frequency: Quarterly.

Dated: June 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12128 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Scoping Period Extension for the Environmental Impact Statement (EIS) for the Long Range Discrimination Radar (LRDR) at Clear Air Force Station (CAFS)

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of decision to extend the scoping period for the Environmental Impact Statement (EIS) for the Long Range Discrimination Radar (LRDR) at Clear Air Force Station (CAFS).

SUMMARY: The Missile Defense Agency (MDA) has decided to extend the scoping period for the Environmental Impact Statement (EIS) for the Long Range Discrimination Radar (LRDR) at Clear Air Force Stations (CAFS) that published in the **Federal Register** on May 17, 2019. The EIS is being prepared

in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA. MDA began construction of the LRDR following a 2016 Environmental Assessment and Finding of No Significant Impact (FONSI). Due to threat evolution, operational requirements have created the need to expand the current Special Use Airspace (SUA) at Clear Air Force Station (AFS) to protect nearby aircraft. Several potential designs of the additional SUA have been developed. The MDA is preparing the EIS to evaluate potential environmental impacts that could result from the LRDR SUA alternatives. The Department of Defense has not selected a preferred alternative for the proposed SUA.

DATES: Interested persons are invited to submit comments on or before July 5, 2019.

ADDRESSES: Written comments, statements, and/or concerns regarding the scope of the EIS or requests to be added to the EIS distribution list should be addressed to MDA CAFS EIS and sent by email to *info@cleareis.com,* by facsimile 907–644–2022, or by U.S. Postal Service to Clear EIS c/o HDR, Inc., 2525C Street, Suite 500, Anchorage, AK 99503. Electronic or facsimile comments are preferred. If sending comments by U.S. Postal Service, please do not submit duplicate electronic or facsimile comments. All comments, including names and addresses, will be included in the administrative record.

FOR FURTHER INFORMATION CONTACT: Mark Wright, MDA Public Affairs at 256–450–1599 or by email: *mda.info@mda.mil.* Additional information can be found at MDA's website: *https://www.mda.mil/news/nepa_documents.html.*

SUPPLEMENTARY INFORMATION: MDA invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues, measures that might be adopted to reduce environmental impacts, and in determining the appropriate scope of the EIS. The public scoping period began with the publication of a Notice of Intent to Prepare an Environmental Impact Statement in the **Federal Register** on May 17, 2019 (84 FR 22479–22480). Written, electronic, and oral comments will be given equal weight and MDA will consider all comments received or postmarked by July 5, 2019 in defining the scope of the EIS. Comments received or postmarked after that date may be considered to the extent practicable.

Public scoping periods are designed to provide opportunities to offer comments on the environmental review for the proposed project. Interested individuals and groups are encouraged to present comments on the environmental issues they believe should be addressed in the EIS consistent with NEPA and its implementing regulations.

The EIS will support the FAAs SUA rule-making process and meet National Historic Preservation Act requirements, including Section 106 Consultation.

Dated: June 4, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12099 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–OS–0031]

Submission for OMB Review; Comment Request

AGENCY: National Guard Bureau, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 10, 2019.

ADDRESSES: Comments and recommendations on the proposed information collection should be emailed to Ms. Jasmeet Seehra, DoD Desk Officer, at *oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer, Docket ID number, and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Education Verification for National Guard Enlistees; High School Verification, NGB Form 900; College Enrollment Verification NGB Form 901; OMB Control Number 0704–XXXX.

Type of Request: New.

Number of Respondents: 10,000.

Responses per Respondent: 1.

Annual Responses: 10,000.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 833.33.

Needs and Uses: The information collection is necessary to verify education status and projected graduation dates for students who agree to enlist in the Army National Guard. Information gathered by the NGB Form 900 is required to verify and determine the graduation dates for high school juniors who enlist in the National Guard. Information gathered by the NGB Form 901 is required to verify the enrollment and graduation dates for college students who enlist in the National Guard. The National Guard will use this information to schedule basic training dates to accommodate a student's educational obligations, thereby ensuring that the enlistee will complete his or her education in a timely manner.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

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

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: June 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–12119 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2019–HA–0066]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 9, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Psychological Health Center of Excellence (PHCoE), 1335 East West Highway, 3–315, Silver Spring, MD 20910 ATTN: LT Evette Pinder, *evette.d.pinder.mil@mail.mil* or 301–295–3705.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Cross-Agency Assessment of Campaigns to Reduce Negative Perceptions about Mental Health; OMB Control Number 0720–XXXX.

Needs and Uses: The information collection requirement is necessary to conduct an online study testing the potential for influence of Department of Defense (DoD), Department of Veterans Affairs (VA), and Department of Health and Human Services (HHS) mental health public awareness campaigns on participants of an online panel. Military service members, veterans, and friends and family members of service members and veterans will be recruited from the panel. They will complete online surveys and view mental health public awareness campaign materials (*e.g.* public service announcements websites). The purpose of this research is to evaluate how exposure to these federally-funded mental health public awareness campaigns change key outcomes related to mental health and health care, such as mental health awareness (*e.g.,* knowing how to recognize and support someone with a mental health problem), perceptions and beliefs about stigma and other barriers to care (*e.g.,* social distance, concerns about career impacts), attitudes towards seeking professional help, intentions to seek treatment if needed, and intentions to conceal a mental health problem. This study is part of larger evaluation study of DoD, VA, and HHS mental health public awareness campaigns. DoD, VA, and HHS will use the findings from these analyses to improve their mental health public awareness campaigns. Additionally, the findings from the study will be shared through publicly available communications.

Affected Public: Individuals or Households.

Annual Burden Hours: 877.338.

Number of Respondents: 2,772.

Responses per Respondent: 3.

Annual Responses: 8,316.

Average Burden per Response: 6.33 minutes.

Frequency: As required.

Dated: June 5, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–12138 Filed 6–7–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

National Wetland Plant List

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The National Wetland Plant List (NWPL) is used to delineate wetlands for purposes of the Clean Water Act and the Wetland Conservation Provisions of the Food Security Act. Other applications of the list include wetland restoration, establishment, and enhancement projects. To update the NWPL, the U.S. Army Corps of Engineers (Corps), as part of an interagency effort with the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS) and the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), is announcing the availability of the draft 2018 National Wetland Plant List (NWPL) and its web address to solicit public comments. The public will now have the opportunity to comment on the proposed update or addition of wetland indicator status ratings for 20 plant species in select Corps wetland regions.

DATES: Comments must be submitted on or before August 9, 2019.

ADDRESSES: U.S. Army Corps of Engineers, Attn: CECW–CO (Ms. Brianne McGuffie), 441 G Street NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Brianne McGuffie, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202–761–4750.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers (Corps) administers the National Wetland Plant List (NWPL) for the United States (U.S.) and its territories. Responsibility for the NWPL was transferred to the Corps from the U.S. Fish and Wildlife Service (FWS) in 2006. The Corps led interagency efforts to update the list in 2012, 2013, 2014, and 2016. The 2012 list contained 7,828 species, the 2013 list contained 7,937 species, the 2014 list contained 8,061 species, and the 2016 list contained 8,085 species. The 2018 draft NWPL is proposed to contain 8,093 species. Additions to and subtractions from these lists represent new records, range extensions, nomenclatural changes, and newly proposed species.

Wetland Indicator Status Ratings

On the NWPL, there are five categories of wetland indicator status ratings, used to indicate a plant's likelihood for occurrence in wetlands versus uplands (*i.e.,* non-wetlands): Obligate Wetland (OBL), Facultative Wetland (FACW), Facultative (FAC), Facultative Upland (FACU), and Obligate Upland (UPL). These rating categories are defined by the National Panel as follows: OBL—almost always occur in wetlands; FACW—usually occur in wetlands, but may occur in non-wetlands; FAC—occur in wetlands and non-wetlands; FACU—usually occur in non-wetlands, but may occur in wetlands; UPL—almost always occur in non-wetlands. These category definitions are qualitative descriptions that better reflect the qualitative supporting information, rather than numeric frequency ranges. The percentage frequency categories used in the older definitions are only used for testing problematic or contested species being recommended for indicator status changes. Plus and minus designations and wetland indicator designations such as No Indicator (NI), No Occurrence (NO), and No Agreement (NA) are no longer used on the NWPL. When assigning wetland indicator status ratings, commenters should use the rating definitions described above and developed by the National Panel for updating the NWPL.

For the purposes of determining how often a species occurs in wetlands, wetlands are defined as those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (33 CFR 328.3 and 40 CFR 230.3). Such wetlands are identified using the Corps 1987 Wetland Delineation Manual or relevant regional supplements, whichever is more recent. Wetlands are identified using the three-factor approach. Because each species being evaluated occurs as part of a vegetation assemblage, examining the other species present in relation to their assigned wetland fidelity may be useful in assessing hydrophytic vegetation.

2018 Update Information

For the 2018 NWPL update, the NWPL National Panel (NP) and Regional Panels (RPs) reviewed proposed wetland rating changes or additions for 20 species and 37 regional ratings (some species were reviewed for multiple regions) submitted by the general public. Eight of these species were proposed for addition to the NWPL, and 12 species were submitted for a rating change request in one or more regions. Submitted information was reviewed by the NP and RPs, and proposed 2018 ratings for these species were determined, as detailed below. Note that all submitted species are included here, regardless of whether or not the NP and RPs proposed a rating change. Hence, for those species where the current and proposed ratings are the same, a rating change request was submitted, but after review of the submitted information no rating change is being proposed for the 2018 update.

Species	Region(s)	Current 2016 rating *	Proposed 2018 rating
Aristida palustris	AGCP	NOL	FACW.
Artemisia dracunculus	AW, WMVC	NOL	FACU.
Bassia hyssopifolia	AW	FACU	FACU.
Bromus nottowayanus	MW, NCNE	NOL	FACU.
Delairea odorata	AW, WMVC	NOL	FAC.
Dichanthelium wrightianum	AGCP	NOL	FACW.
Epilobium brachycarpum	AW, WMVC	NOL	FAC.
Hymenocallis latifolia	AGCP, CB	FACW	FACU.
Hymenocallis occidentalis	AGCP, EMP, GP, MW	OBL/FACW	FAC.
Ilex opaca	AGCP	FAC	FAC.
Iva axillaris	AW, WMVC	FAC	FACU.
Liriodendron tulipifera	AGCP, EMP	FACU	FACU.
Penstemon rydbergii	AW, WMVC	FACU	FACU.
Pleopeltis polypodioides	AGCP	FAC	UPL.
Polymnia canadensis	EMP, MW, NCNE	NOL	FACU.
Pycnanthemum muticum	EMP	FAC	FACU.
Quercus michauxii	AGCP	FACW	FACW.
Tussilago farfara	NCNE	FACU	FACU.
Verbena brasiliensis	AGCP, EMP, MW	NOL	FACU.
Verbena incompta	AGCP, EMP, MW	FACW/FAC	FACU.

**NOL = "Not On List" and indicates proposed additions.*

Instructions for Providing Comments Online

The Corps encourages public input in the form of data, comments, literature references, or field experiences, to help clarify the status of the species reviewed for this update. The list of these same 20 reviewed species, and their draft 2018 wetland ratings by region, can be viewed at the NWPL homepage, *http://wetland-plants.usace.army.mil/* under "2018 NWPL Update Information." A link to provide general or species-specific comments is also available at this location. Users are encouraged to submit literature citations, herbaria records, experiential references, monitoring data, and other relevant information. Specific knowledge of, or studies related to, individual species are particularly helpful. Commenters should use their regional botanical and ecological expertise, field observations, reviews of the most recent indicator status information, appropriate botanical literature, floras, herbarium specimens with notation of habitat and associated species, habit data, relevant studies, and historic list information. Guessing ratings is inappropriate. All submitted comments and information will be compiled and sent to the National Panel for their consideration.

The Corps is also seeking comments on the NWPL update process. Detailed information on the update process, protocol, and technical issues can be found in the following documents (available on the NWPL Publications web page):

- Lichvar, Robert W. and Minkin, Paul. Concepts and Procedures for Updating the National Wetland Plant List. Sept 2008. ERDC/CRREL TN–08–3

• Lichvar, Robert W. and Gillrich, Jennifer J. Final Protocol for Assigning Wetland Indicator Status Ratings during National Wetland Plant List Update. Sept 2011. ERDC/CRREL TN–11–1

Future Actions

Future updates to the NWPL will occur biennially. A change in indicator status for a given species, or a proposed species addition, may be requested at any time at *http://wetland-plants.usace.army.mil/* under ''Submit NWPL Change Request.'' Submissions will be compiled and reviewed prior to each NWPL update, and resulting changes will be reflected in the subsequent updated list.

Dated: June 2, 2019.

Thomas P. Smith,

Chief, Operations and Regulatory Division, Directorate of Civil Works.

[FR Doc. 2019–12129 Filed 6–7–19; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity (NACIQI), Office of Postsecondary Education, U.S. Department of Education.

ACTION: Announcement of an open meeting.

SUMMARY: This notice sets forth the agenda, time, and location for the July 30–31, 2019 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI) and provides information to members of the public regarding the meeting, including requesting to make oral comments. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act (FACA) and section 114(d)(1)(B) of the Higher Education Act (HEA) of 1965, as amended.

DATES: The NACIQI meeting will be held on July 30–31, 2019, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: Hilton Hotel—Old Town Alexandria, Grand Ballroom, 1767 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Jennifer Hong, Executive Director/Designated Federal Official, NACIQI, U.S. Department of Education, 400 Maryland Avenue SW, Room 271–03, Washington, DC 20202, telephone: (202) 453–7805, or email: *Jennifer.Hong@ed.gov.*

SUPPLEMENTARY INFORMATION:

NACIQI's Statutory Authority and Function: NACIQI is established under section 114 of the HEA. NACIQI advises the Secretary of Education with respect to:

• The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part G, Title IV of the HEA, as amended.

• The recognition of specific accrediting agencies or associations.

• The preparation and publication of the list of nationally recognized accrediting agencies and associations.

• The eligibility and certification process for institutions of higher education under Title IV of the HEA and part C, subchapter I, chapter 34, Title 42, together with recommendations for improvement in such process.

• The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.

• Any other advisory function relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

Meeting Agenda: Agenda items for the July 2019 meeting are below.

Agencies Applying for Initial Recognition

1. National League for Nursing Commission for Nursing Education Accreditation. Requested Scope of Recognition: The pre-accreditation and accreditation of nursing education programs, in the United States and its territories, which offer a certificate, diploma or degree at the practical/vocational, diploma, associate, baccalaureate, masters, doctoral levels, including those offered via distance education.

Agencies Applying for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training. Scope of Recognition: The accreditation throughout the United States of institutions of higher education that offer continuing education and vocational programs that confer certificates or occupational associate degrees, including those programs offered via distance education.

2. American Veterinary Medical Association, Council on Education. Scope of Recognition: The accreditation and preaccreditation (''Provisional Accreditation'') in the United States of programs leading to professional degrees (D.V.M. or D.M.D.) in veterinary medicine.

3. Council on Education for Public Health. Scope of Recognition: The accreditation within the United States of schools of public health and public health programs outside schools of public health, at the baccalaureate and graduate degree levels, including those offered via distance education.

4. National Association of Schools of Dance, Commission on Accreditation. Scope of recognition: The accreditation throughout the United States of freestanding institutions that offer dance and dance-related programs (both degree and non-degree-granting), including those offered via distance education.

5. National Association of Schools of Music, Commission on Accreditation. Scope of recognition: The accreditation throughout the United States of freestanding institutions that offer music and music related programs (both degree and non-degree-granting), including those offered via distance education.

6. National Association of Schools of Theatre, Commission on Accreditation. Scope of recognition: The accreditation throughout the United States of freestanding institutions that offer theatre and theatre-related programs (both degree and non-degree-granting), including those offered via distance education.

7. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges. Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges with a primarily pre-baccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel.

Compliance Report

1. The Council on Chiropractic Education. Compliance report includes the following: Finding identified in the May 25, 2017 letter from the senior Department official following the

February 22, 2017 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* with respect to recognition requirements found at 34 CFR 602.20(a). Scope of Recognition: The accreditation of programs leading to the Doctor of Chiropractic degree and single-purpose institutions offering the Doctor of Chiropractic program.

2. Commission on English Language Program Accreditation. Compliance report includes the following: Finding identified in the May 25, 2017 letter from the senior Department official following the February 22, 2017 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* with respect to recognition requirements found at 34 CFR 602.20(b). Scope of Recognition: The accreditation of postsecondary, non-degree-granting English language programs and institutions in the United States.

3. Middle States Commission on Secondary Schools. Compliance report includes the following: Finding identified in the September 20, 2017 letter from the senior Department official following the June 20, 2017 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* with respect to recognition requirements found at 34 CFR 602.15(a)(1) and 602.15(a)(2). Scope of recognition: The accreditation of institutions with postsecondary, non-degree granting career and technology programs in Delaware, Maryland, New Jersey, New York, Pennsylvania, the Commonwealth of Puerto Rico, the District of Columbia, and the U.S. Virgin Islands to include the accreditation of postsecondary, non-degree granting institutions that offer all or part of their educational programs via distance education modalities.

4. Southern Association of Colleges and Schools, Commission on Colleges (SACSCOC). Compliance report includes the following: Finding identified in the September 20, 2017 letter from the senior Department official following the June 20, 2017 NACIQI meeting available at: *https://opeweb.ed.gov/aslweb/finalstaffreports.cfm,* with respect to recognition requirements found at 34 CFR 602.15(a)(2). Scope of recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia, including the accreditation of programs offered via distance and correspondence education within these institutions. This recognition extends to the SACSCOC Board of Trustees and the Appeals Committee of the College Delegate Assembly on cases of initial candidacy or initial accreditation and for continued accreditation or candidacy.

Application for an Expansion of Scope

1. Association for Clinical Pastoral Education, Inc. Scope of Recognition: The accreditation of both clinical pastoral education (CPE) centers and supervisory CPE programs located within the United States and territories. Requested Scope of Recognition: The provisional accreditation and accreditation of both clinical pastoral education (CPE) centers and certified educator CPE programs within the United States and territories, including those that offer those programs via distance education.

2. Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges. Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges with a primarily prebaccalaureate mission located in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands, which offer certificates, associate degrees, and the first baccalaureate degree by means of a substantive change review offered by institutions that are already accredited by the agency, and such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel. Requested Scope of Recognition: The accreditation and preaccreditation (''Candidate for Accreditation'') of community and other colleges in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Marianas, and the Republic of the Marshall Islands, which have as a primary mission the granting of associate degrees, but which may also award certificates and other credentials, including bachelor's degrees, where the provision of such credentials is within the institution's mission and, if applicable, is authorized by their governmental authorities, and the accreditation of such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes.

Subcommittee on Substantive Change

The subcommittee on substantive change will report out to the full committee on its charge from the May 22–24, 2018 meeting to look at the issue of substantive changes, including, but not limited to, for-profit institutions' conversions to non-profit entities.

Accreditation Rules

The Principal Deputy Under Secretary Delegated the Duties to Perform the Duties of Under Secretary will provide remarks on the Administration's implementation of regulations under 34 CFR 602. The Department reached consensus on rules governing the Secretary's recognition process during negotiated rulemaking sessions on April 3, 2019.

Meeting Discussion

In addition to following the HEA, the FACA, implementing regulations, and the NACIQI charter, as well as its customary procedural protocols, NACIQI inquiries will include the questions and topics listed in the pilot plan it adopted at its December 2015 meeting. A document entitled ''June 2016 Pilot Plan'' available at: *http://sites.ed.gov/naciqi/files/naciqi-dir/2016-spring/pilot-project-march-2016.pdf,* provides further explanation and context framing NACIQI's work. As noted in this document, NACIQI's reviews of accrediting agencies will include consideration of data and information available on the accreditation data dashboards: *https://sites.ed.gov/naciqi/files/2018/05/NACIQI-May-2018-Accreditor-Dashboards.pdf.* Accrediting agencies that will be reviewed for renewal of recognition will not be on the consent agenda and are advised to come prepared to answer questions related to the following:

- Decision activities of and data gathered by the agency.
  - NACIQI will inquire about the range of accreditation activities of the agency since its prior review for recognition, including discussion about the various favorable, monitoring, and adverse actions taken. Information about the primary standards cited for the monitoring and adverse actions that have been taken will be sought.
  - NACIQI will also inquire about what data the agency routinely gathers about the activities of the institutions it

accredits and about how that data is used in their evaluative processes.

- Standards and practices with regard to student achievement.
  - How does your agency address ''success with respect to student achievement'' in the institutions it accredits?
  - Why was this strategy chosen? How is this appropriate in your context?
  - What are the student achievement challenges in the institutions accredited by your agency?
  - What has changed/is likely to change in the standards about student achievement for the institutions accredited by your agency?
  - In what ways have student achievement results been used for monitoring or adverse actions?
- Agency activities in improving program/institutional quality.
  - How does this agency define ''at risk?''
  - What tools does this agency use to evaluate ''at risk'' status?
  - What tools does this agency have to help ''at risk'' institutions improve?
  - What can the agency tell us about how well these tools for improvement have worked?

To the extent NACIQI's questions go to improvement of institutions and programs that are not at risk of falling into noncompliance with agency requirements, the responses will be used to inform NACIQI's general policy recommendations to the Department rather than its recommendations regarding recognition of any individual agency.

The discussions and issues described above are in addition to, rather than substituting for, exploration by NACIQI members of any topic relevant to recognition.

Submission of requests to make an oral comment regarding a specific accrediting agency under review, or to make an oral comment or written statement regarding other issues within the scope of NACIQI's authority: Opportunity to submit a written statement regarding a specific accrediting agency under review was solicited by two previous **Federal Register** notices published on September 4, 2018 (Vol. 83, No. 171) and March 4, 2019 (Vol. 84, No. 42), respectively. The period for submission of such statements are now closed. Additional written comments regarding a specific agency or state approval agency under review will not be accepted at this time. However, members of the public may submit written statements regarding other issues within the scope of NACIQI's authority for consideration by NACIQI in the manner described below. No individual in attendance or making oral comments may distribute written materials at the meeting. Oral comments may not exceed three minutes.

Oral comments about an agency's recognition after review of a compliance report must relate to issues identified in the compliance report and the criteria for recognition cited in the senior Department official's letter that requested the report, or in the Secretary's appeal decision, if any. Oral comments about an agency seeking expansion of scope must be directed to the agency's ability to serve as a recognized accrediting agency with respect to the kinds of institutions or programs requested to be added. Oral comments about the renewal of an agency's recognition based on a review of the agency's petition must relate to its compliance with the Criteria for the Recognition of Accrediting Agencies, which are available at *http://www.ed.gov/admins/finaid/accred/index.html*. Written statements and oral comments concerning NACIQI's work outside of a specific accrediting agency under review must be limited to the scope of NACIQI's authority as outlined under section 114 of the HEA.

To request to make a third-party oral comment of three minutes at the July 30–31, 2019 meeting, please follow either Method One or Method Two. To submit a written statement to NACIQI concerning its work outside a specific accrediting agency under review, please follow Method One.

Method One: Submit a request by email to the *ThirdPartyComments@ed.gov* mailbox. Please do not send material directly to NACIQI members. Written statements and requests to make oral comment must be received by July 12, 2019, and include the subject line ''Oral Comment Request: (agency name),'' ''Oral Comment Request: (subject)'' or ''Written Statement: (subject).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, telephone number, of the person(s) submitting a written statement or requesting to speak, and a brief summary (not to exceed one page) of the principal points to be made during the oral presentation, if applicable. All individuals submitting an advance request in accordance with this notice will be afforded an opportunity to speak.

Method Two: Register at the meeting location on July 30, 2019, from 7:30 a.m.–8:30 a.m., to make an oral comment during NACIQI's deliberations. The requestor must provide the subject on which he or she wishes to comment, in addition to his or her name, title, organization/affiliation, mailing address, email address, and telephone number. A total of up to fifteen minutes for each agenda item will be allotted for oral commenters who register on July 30, 2019 by 8:30 a.m. Individuals will be selected on a first-come, first-served basis. If selected, each commenter may not exceed three minutes.

Access to Records of the Meeting: The Department will post the official report of the meeting on the NACIQI website within 90 days after the meeting. In addition, pursuant to the FACA, the public may request to inspect records of the meeting at 400 Maryland Avenue SW, Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 453–7615 to schedule an appointment.

Reasonable Accommodations: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 1011c.

Lynn B. Mahaffie,

Deputy Assistant Secretary for Policy, Planning, and Innovation.

[FR Doc. 2019–12123 Filed 6–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Applications for New Awards; School Climate Transformation Grant Program—Local Educational Agency Grants

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for fiscal year (FY) 2019 for the School Climate Transformation Grant Program—Local Educational Agency Grants, Catalog of Federal Domestic Assistance (CFDA) number 84.184G. This notice relates to the approved information collection under OMB control number 1894–0006.

DATES:

Applications Available: June 10, 2019.

Deadline for Transmittal of Applications: July 22, 2019.

Deadline for Intergovernmental Review: September 18, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Carlette KyserPegram. Telephone: (202) 453–6732. Email: *LEA.SCTG19@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The School Climate Transformation Grant Program—Local Educational Agency Grants (SCTG–LEA) provides competitive grants to local educational agencies (LEAs) to develop, enhance, or expand systems of support for, and technical assistance to, schools implementing a multi-tiered system of support, for improving school climate.

Background: School climate plays a critical role in the potential success and school experiences of a student. Students who learn in positive learning environments are more likely to improve academically, participate more fully in the classroom, and develop skills that will help them be successful in school and in life. Recent studies on school climate have focused on the many different elements and indicators of the overall quality of a school's climate, and its relationship to academic and behavioral outcomes.[1] Accordingly, in 2014, the Department developed a school climate survey resource, called the ED School Climate Survey tool (EDSCLS), to assist States, local districts, and schools to collect and access data related to their school climate. This tool focuses on three content domains: (1) Engagement (which encompasses cultural and linguistic competence, relationships, and school participation), (2) safety (which encompasses emotional safety, physical safety, bullying/cyberbullying, substance abuse, and emergency readiness/management), and (3) environment, including physical environment, instructional environment, physical health, mental health, and discipline.[2]

In April 2019, the Department released a Parent and Educator Guide to School Climate Resources (Guide) document. The purpose of the Guide is to provide general information about the concept of school climate improvement, suggestions for leading an effective school climate improvement effort, and additional resources for those interested in more information.[3]

Implementing a multi-tiered system of support (MTSS) framework is one strategy schools can use to address their school climate concerns. MTSS frameworks are designed to assist schools in providing the appropriate level of instruction and intervention for their students. The successful implementation of an MTSS can support many areas of students' needs including academic growth and achievement, behavior, and social and emotional needs. In schools with healthy learning environments, students tend to score higher on standardized tests.[4] Conversely, researchers find that students who perceive personal victimization and unfairness in school are generally less engaged, and schools where students report more hostility have lower student engagement and lower academic achievement.[5] Furthermore, data from the 2015 School Crime Supplement shows that students experiencing bullying or criminal victimization rate their schools' overall climate lower.[6] We also note that multi-tiered behavioral frameworks, such as positive behavioral interventions and supports (PBIS), that were the focus of the previous School Climate Transformation Grants LEA competition in fiscal year 2014, are an example of an MTSS that research shows can help improve overall school climate and safety.[7]

In March 2018, the President emphasized a national need to examine the safety and security of our schools. He also appointed a Federal Commission on School Safety.[8] In December 2018, the Federal Commission on School Safety released a final report on its work. The report offers recommendations for States, local communities, and the Federal government on strategies for improving school safety.[9] Under the SCTG–LEA program, grantees may use funds to support activities directly linked with some of those recommendations as they develop local approaches to address a wide range of school climate issues through implementation of evidence-based practices for improving school engagement, safety, and environment for all students.

Moreover, LEAs that implement these school climate improvement efforts as part of a coordinated strategy will enhance their ability to achieve the goals and objectives of both this program and others that are included in the coordinated effort. A coordination of all programs that use evidence-based practices for improving school engagement, safety, and environment for all students will facilitate interagency partnerships and strategies to address

[1] Wang, M.T. & Degol, J.L. (2016). School Climate: A Review of the Construct, Measurement, and Impact on Student Outcomes. Educational Psychology Review, 28(2), 315–352.

[2] National Center on Safe Supportive Learning Environments. ED School Climate Surveys. Retrieved from: *https://safesupportivelearning.ed.gov/edscls/measures.*

[3] Access the Parent and Educator Guide to School Climate Resources (Guide) at: *https://www2.ed.gov/policy/elsec/leg/essa/essaguidetoschoolclimate041019.pdf.*

[4] MacNeil, A.J., Prater, D.L., & Busch, S. (2009). The effects of school culture and climate on student achievement. International Journal of Leadership in Education, 12(1), 73–84.

[5] Ripski, M.B., & Gregory, A. (2009). Unfair, unsafe, and unwelcome: Do high school students' perceptions of unfairness, hostility, and victimization in school predict engagement and achievement? Journal of School Violence, 8(4), 355–375.

[6] National Center for Education Statistics. (2018). Measuring School Climate Using the 2015 School Crime Supplement: Technical Report. Institute of Education Sciences, Retrieved from: *https://nces.ed.gov/pubs2018/2018098.pdf.*

[7] Bradshaw, C.P., Koth, C.W., Thornton, L.A., & Leaf, P.J. (2009). Altering School Climate through School-Wide Positive Behavioral Interventions and Supports: Findings from a Group-Randomized Effectiveness Trial. Prevention Science.

[8] See *www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools/.*

[9] Report available at: *https://www2.ed.gov/documents/school-safety/school-safety-report.pdf.*

school climate issues in a comprehensive manner.

Through this program, the Department will prioritize supporting certain communities that may uniquely benefit from implementing a multi-tiered system of support. In particular, the Department is establishing an absolute priority for an LEA that is a rural LEA (as defined in this notice) or serves a Tribal community. The Department is also establishing a separate absolute priority for an LEA that is in a Qualified Opportunity Zone (as defined in this notice).

Priorities: This competition includes four absolute priorities and three competitive preference priorities. We are establishing the absolute priorities and Competitive Preference Priority 3 for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). In accordance with 34 CFR 75.105(b)(2)(ii), Competitive Preference Priorities 1 and 2 are from the Department's Notice of Final Supplemental Priorities and Definitions for Discretionary Grant Programs (Supplemental Priorities), published in the **Federal Register** on March 2, 2018 (83 FR 9096).

Absolute Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet Absolute Priority 1 and one of Absolute Priorities 2, 3, or 4.

Note: The Secretary intends to create three funding slates for SCTG applications—one for applications that meet Absolute Priorities 1 and 2, a separate slate for applications that meet Absolute Priorities 1 and 3, and a third slate for applications that meet Absolute Priorities 1 and 4. As a result, the Secretary may fund applications out of the overall rank order. The Secretary anticipates awarding at least 15 grants from among applicants that meet Absolute Priorities 1 and 2 and at least 15 grants from applicants that meet Absolute Priorities 1 and 3, provided applications of sufficient quality are submitted, but the Secretary is not bound by these estimates. Applicants must clearly identify the specific absolute priorities that the proposed project addresses.

These priorities are:

Absolute Priority 1—Improving School Climate.

Projects designed to develop, enhance, or expand systems of support for, and technical assistance to, schools implementing a multi-tiered system of support for improving school climate, which may include a multi-tiered behavioral framework, by using evidence-based efforts that are designed to foster safety; promote supportive academic, disciplinary, and physical environments; and/or encourage and maintain respectful, trusting, and caring relationships throughout the school community.

Absolute Priority 2—LEAs that are rural LEAs or serve a federally recognized Tribe.

An LEA, including a BIE-funded school, meets this absolute priority if it provides evidence that it meets one of the following criteria: (1) It is a rural LEA, as defined in this notice; or (2) it predominantly serves members of one federally recognized Tribe. In determining whether a charter school LEA meets criteria (1) of this absolute priority, we consider where the school is located, regardless of where the students it serves live.

Absolute Priority 3—LEAs that include a Qualified Opportunity Zone.

An LEA meets this priority if it includes, as a portion of the area served by the LEA, a Qualified Opportunity Zone under section 1400Z–1 of the Internal Revenue Service Code, as amended by the Tax Cuts and Jobs Act, as defined in this notice. In determining whether a charter school LEA meets this absolute priority, we consider where the school is located, regardless of where the students it serves live.

Absolute Priority 4—LEAs that are not rural LEAs, do not include Qualified Opportunity Zones, and do not serve a Tribe.

An LEA meets this absolute priority if it indicates in its application that it is not a rural LEA, as defined in this notice, does not serve a Qualified Opportunity Zone, and does not predominantly serve members of one federally recognized Tribe.

Competitive Preference Priorities: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(1) we award up to an additional two points for Competitive Preference Priority 1, up to an additional three points for Competitive Preference Priority 2, and up to an additional five points for Competitive Preference Priority 3, depending on how well the application meets each of Competitive Preference Priorities 1, 2, and 3. Applications may address any one or more of the competitive preference priorities, for a maximum of 10 competitive preference priority points. An applicant must clearly indicate in the abstract section of its application each competitive preference priority under which it is applying.

These priorities are:

Competitive Preference Priority 1—Protecting Freedom of Speech and Encouraging Respectful Interactions in a Safe Educational Environment. (0 to 2 points)

Projects that are designed to develop positive learning environments that promote strong relationships among students and school personnel to help prevent bullying, violence, and disruptive actions that diminish the opportunity for each student to receive a high-quality education.

Competitive Preference Priority 2—Fostering Knowledge and Promoting the Development of Skills That Prepare Students To Be Informed, Thoughtful, and Productive Individuals and Citizens. (0 to 3 points)

Projects that are likely to improve student academic performance and better prepare students for employment, responsible citizenship, and fulfilling lives, including by preparing children or students to do one or more of the following:

(i) Develop positive personal relationships with others.

(ii) Develop determination, perseverance, and the ability to overcome obstacles.

(iii) Develop self-esteem through perseverance and earned success.

(iv) Develop problem-solving skills.

(v) Develop self-regulation in order to work toward long-term goals.

Competitive Preference Priority 3—Opioid Abuse and Prevention. (0 to 5 points)

Applications that propose a high-quality plan to implement opioid abuse prevention and mitigation strategies. The plan must describe how the LEA will use funds to implement evidence-based strategies for preventing opioid abuse by students, and/or address the mental health needs of students who are negatively impacted by family or community members who are (or have been) abusers. The plan may also include providing technical assistance to, or support for, schools that implement or plan to implement high-quality approaches to opioid abuse prevention such as the Screening, Brief Intervention, and Referral to Treatment (SBIRT) approach supported by the U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

Applicants that receive competitive preference points under this priority and are ultimately awarded an SCTG–LEA grant will finalize and implement the high-quality plan described in response to this priority post-award.

Requirements: We are establishing these program requirements and application requirements for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1).

Program Requirements: Each grantee must implement a project that builds LEA capacity for supporting schools implementing evidence-based efforts to improve school climate by—

(a) Developing, enhancing, or expanding systems of support for, and technical assistance to, schools implementing a multi-tiered system of support for improving school climate by using evidence-based efforts that are designed to foster safety; promote supportive academic, disciplinary, and physical environments; and/or encourage and maintain respectful, trusting, and caring relationships throughout the school community;

(b) Improving the skills of LEA personnel to assist schools' efforts to improve school climate through, for example, policies, funding, professional development, coaching, and coordination of providing services and implementing programs;

(c) Improving the quality, accessibility, and usefulness of any relevant districtwide data collection and analysis related to data-based decision making in areas related to improved school climate;

(d) Defining what it means to implement the multi-tiered system of support with fidelity and determining annually the extent to which the impacted schools are implementing such model with fidelity, for example, by using a tool or rubric to review implementation;

(e) Encouraging the use of evidence-based practices and reliable and valid tools and processes for evaluating the fidelity of efforts related to improved school climate; and

(f) Coordinating LEA efforts with appropriate Federal, State, and local resources.

Application Requirements: The applicant must—

(a) Describe the current efforts by the LEA to support schools implementing evidence-based efforts that are designed to foster safety; promote a supportive academic, disciplinary, and physical environment; and/or encourage and maintain respectful, trusting, and caring relationships throughout the school community;

(b) Describe how the LEA used the EDSCLS or similar assessment tool to help determine program needs and will use the EDSCLS or similar assessment tool for program decision making and improvements;

(c) Describe its plan to build, improve, or enhance LEA capacity to provide effective training, technical assistance, and support to schools related to implementing evidence-based efforts that are designed to foster safety; promote a supportive academic, disciplinary, and physical environment; and/or encourage and maintain respectful, trusting, and caring relationships throughout the school community, including—

(1) When and how often the applicant plans to conduct technical assistance activities;

(2) How the applicant plans to garner buy-in from participants and other stakeholders; and

(3) The estimated number of schools that will be assisted; and

(d) Describe how the proposed project will address the needs of schools identified for comprehensive support and improvement under section 1111(d)(1) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and schools identified for targeted support and improvement under section 1111(d)(2) of the ESEA.

Definitions: We are establishing the definitions of ''Qualified Opportunity Zone'' and ''rural local educational agency'' in this notice for the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition, in accordance with section 437(d)(1) of GEPA, 20 U.S.C. 1232(d)(1). The definition of ''local educational agency'' is from 20 U.S.C. 7801(30). The definition of ''multi-tiered system of support'' is from section 8101(33) of the ESEA. The definitions of ''demonstrates a rationale,'' ''evidence-based,'' ''experimental study,'' ''logic model,'' ''moderate evidence,'' ''project component,'' ''promising evidence,'' ''quasi-experimental design study,'' ''relevant outcome,'' ''strong evidence,'' and ''What Works Clearinghouse Handbook'' are from 34 CFR 77.1.

These definitions are:

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

Local educational agency (LEA) means—

(i) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools;

(ii) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school;

(iii) An elementary school or secondary school funded by the Bureau of Indian Education but only to the extent that including the school makes

the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Education;

(iv) Educational service agencies and consortia of those agencies; or

(v) The State educational agency in a State in which the State educational agency is the sole educational agency for all public schools.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

Multi-tiered system of support means a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs, with regular observation to facilitate data-based instructional decision making.

Note: For purposes of this notice a multi-tiered behavioral framework such as Positive Behavioral Interventions and Supports falls under this definition.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Qualified Opportunity Zone means a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97). To demonstrate that it meets Absolute Priority 3 by being located in a Qualified Opportunity Zone, an applicant must provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to provide services. A list of Qualified Opportunity Zones is available at: *www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Rural local educational agency means a local educational agency that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title V, Part B of the ESEA. Eligible applicants may determine whether a particular district is eligible for these programs by referring to information on the Department's website at *https://www2.ed.gov/programs/reapsrsa/eligibility.html.*

Note: For the purposes of this competition, in order to qualify as a rural LEA under this definition, an LEA must have been eligible for fiscal year 2018 or 2019 SRSA or RLIS funds.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under Title IV, part F, subpart 3 of the ESEA (20 U.S.C. 7281) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forgo public comment on the priorities and requirements under section 437(d)(1) of GEPA. These priorities and requirements will apply to the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Authority: Subpart 3 of Title IV, Part F of the ESEA (20 U.S.C. 7281).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The Supplemental Priorities.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $40,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2020 and subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: $100,000 to $750,000 per year for up to 5 years.

Estimated Average Size of Awards: $500,000.

Maximum Award: We will not make an award exceeding $750,000 for a single budget period of 12 months.

Estimated Number of Awards: 80.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* (a) LEAs, or consortia of LEAs, as defined by section 8101(30) of the ESEA. (b) The Secretary limits eligibility under this discretionary grant competition to LEAs that have never received a grant under SCTG–LEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768), and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points or weights assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will evaluate and score each application program narrative against the following selection criteria:

(a) Need for project. (15 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) Significance. (15 points)

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(c) Quality of the project design. (20 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives. (15 points)

(ii) The extent to which the proposed project represents an exceptional approach to the priority or priorities

established for the competition. (5 points)

(d) Quality of the project services. (30 points)

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(e) Quality of the project evaluation. (20 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project. (10 points)

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (10 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200 subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Department has established the following Government Performance and Results Act of 1993 performance measures for SCTG–LEA:

(a) The number of training and/or technical assistance events to support implementation with fidelity provided annually by LEAs to schools implementing a multi-tiered system of support.

(b) Number and percentage of schools annually that report an improved school

climate based on the results of the EDSCLS or similar tool.

(c) Number and percentage of schools annually that are implementing a multi-tiered system of support framework with fidelity.

(d) Number and percentage of schools annually that are implementing opioid abuse prevention and mitigation strategies.

(e) Number and percentage of schools that report an annual decrease in suspensions and expulsions related to possession or use of alcohol.

(f) Number and percentage of schools that report an annual decrease in suspensions and expulsions related to possession or use of other drugs.

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures. This data will be considered by the Department in making continuation awards.

Consistent with 34 CFR 75.591, grantees funded under this program shall comply with the requirements of any evaluation of the program conducted by the Department or an evaluator selected by the Department.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–12101 Filed 6–7–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Supplemental Notice Concerning U.S. Department of Energy Interpretation of High-Level Radioactive Waste

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice.

SUMMARY: In this Supplemental Notice, the U.S. Department of Energy (Department or DOE) supplements and updates its 2018 *Request for Public Comment on the U.S. Department of Energy Interpretation of High-Level Radioactive Waste,* published in the **Federal Register** on October 10, 2018 (October 10 Notice), concerning its interpretation of the statutory term ''high-level radioactive waste'' (HLW) as defined in the Atomic Energy Act of 1954, as amended, and the Nuclear Waste Policy Act of 1982, as amended.

ADDRESSES: *This* ***Federal Register*** *Notice* (Notice) is available on the Department's website at: *https://www.energy.gov/em/high-level-radioactive-waste-hlw-interpretation.*

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SUPPLEMENTARY INFORMATION: As DOE stated in the October 10 Notice and as this Supplemental Notice reiterates, DOE interprets this statutory term to mean that not all wastes from the reprocessing of spent nuclear fuel (reprocessing wastes) are HLW. DOE interprets the statutory term such that some reprocessing wastes may be classified as not HLW (non-HLW) and may be disposed of in accordance with their radiological characteristics. This Supplemental Notice provides additional explanation of DOE's interpretation as informed by public review and comment and further consideration by DOE following the October 10 Notice. DOE has not made, and does not presently propose, any changes or revisions to current policies, legal requirements or agreements with respect to HLW. Decisions about whether and how this interpretation of HLW will apply to existing wastes and whether such wastes may be managed as non-HLW will be the subject of subsequent actions.

I. Background

The Department sought public comments on its HLW interpretation through its *Request for Public Comment on the U.S. Department of Energy Interpretation of High-Level Radioactive Waste,* 83 FR 50909 (October 10, 2018). The 90-day public comment period, including a 30-day extension to submit comments, invited public input in order to better understand stakeholder perspectives, and sought to increase transparency and enhance public understanding of DOE's views of its legal authority. DOE received a total of 5,555 comments, roughly 360 of which were distinct, unrepeated comments, from a variety of stakeholders: Members of the public, Native American tribes, members of Congress, numerous state and local governments, and one federal agency, the Nuclear Regulatory Commission (NRC).

All input is important to the process and all comments were carefully and fully considered by DOE. DOE is issuing this Supplemental Notice to provide the public additional information about its HLW interpretation, informed by public comments. This interpretation does not change or revise any current policies, legal requirements, or agreements with respect to HLW. Decisions about whether and how this interpretation of HLW will apply to existing wastes and whether such wastes may be managed as non-HLW will be the subject of subsequent actions. The following

sections of this Supplemental Notice describe the Department's HLW interpretation, and provide summary responses to significant and recurring comments received through the public comment process.

As a first step in determining whether and how to implement this HLW interpretation specific to a particular waste stream, DOE is initiating a public process under the National Environmental Policy Act (NEPA) to analyze the potential environmental impacts associated with disposing of certain waste from the Savannah River Site at a commercial disposal facility outside South Carolina licensed by either the Nuclear Regulatory Commission (NRC) or an Agreement State under 10 CFR part 61 to receive low-level radioactive waste. This NEPA process is explained further in a separate Notice, *Environmental Assessment for the Commercial Disposal of Defense Waste Processing Facility Recycle Wastewater from the Savannah River Site* (NOI) that was submitted concurrently with this Supplemental Notice for publication in the **Federal Register**. At this time, DOE is not considering whether to implement the HLW interpretation at any other site or for any other waste stream. While DOE will continue in the normal course to evaluate its waste inventories and related management and disposal options, and expects to engage openly with stakeholders regarding potential future opportunities to implement the HLW interpretation more broadly, any decisions about whether and how the interpretation will apply to other wastes at any specific site will be the subject of subsequent actions.

II. Summary Description

In this Supplemental Notice, DOE explains its interpretation of the term HLW, as defined in the Atomic Energy Act of 1954, as amended (AEA, 42 U.S.C. 2011 *et seq.*) and the Nuclear Waste Policy Act of 1982, as amended (NWPA, 42 U.S.C. 10101 *et seq.*). DOE has the long-standing authority and responsibility under the AEA to ensure that all radioactive waste from the United States' defense program—including reprocessing waste—is managed and disposed of in a safe manner. The AEA and NWPA define HLW as:

> (A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and
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> (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

42 U.S.C. 10101(12); *see* 42 U.S.C. 2014(dd). This definition of HLW makes clear that not all radioactive wastes from nuclear fuel reprocessing are HLW. DOE has the legal authority to interpret the term HLW in these statutes to determine that certain of its reprocessing wastes are not HLW based on their radiological characteristics. Accordingly, DOE interprets those statutes to provide that reprocessing wastes are properly classified as non-HLW where the radiological characteristics of the waste in combination with appropriate disposal facility requirements for safe disposal demonstrate that disposal of such waste is fully protective of human health and the environment.

DOE has revised the interpretation stated in its October 10 Notice after consideration of public comments, in particular those of the NRC and affected state and local stakeholders, in order to clarify its meaning and import. Based on those comments, DOE interprets the statutes to provide that a reprocessing waste may be determined to be non-HLW if the waste meets either of the following two criteria:

> (I) does not exceed concentration limits for Class C low-level radioactive waste as set out in section 61.55 of title 10, Code of Federal Regulations, and meets the performance objectives of a disposal facility; or
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> (II) does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable requirements.

Performance objectives are the quantitative radiological standards set by the NRC or DOE to ensure protection of the health and safety of individuals and the environment during operation, and after permanent closure of the disposal facility. The technical means to demonstrate compliance with performance objectives are through a modeling and analytical tool commonly referred to as a performance assessment. Safe disposal also entails compliance with other facility requirements, such as waste acceptance criteria—the technical and administrative requirements associated with waste acceptance, including but not limited to: Allowable radionuclide content; waste form and packaging; and required waste generator certifications and approvals. Reprocessing waste meeting either I or II of the above criteria is non-HLW, and—pursuant to appropriate processes—may be classified and disposed in accordance with its radiological characteristics in an appropriate facility provided all applicable requirements of the disposal facility are met.

As noted, additional, subsequent DOE action is required before the interpretation in this Supplemental Notice can be implemented. This Supplemental Notice, therefore, does not alter the Department's current management of reprocessing waste for any specific waste stream. Each reprocessing waste stream has unique radiological characteristics and, accordingly, the interpretation will be implemented in subsequent actions on a site-specific basis, following consideration of: Evaluation and characterization of specific reprocessing waste streams in conjunction with the waste acceptance criteria and requirements of a specific waste disposal facility; input from affected stakeholders (*e.g.,* federal, state, local and tribal officials; and members of the public); and compliance with applicable federal and state laws, regulations, and agreements. This interpretation does not, and will not be used to, abrogate DOE's responsibilities under existing laws, regulations, agreements, or permit requirements. Nor does it change DOE's existing statutory authorities or those of its regulators at the federal, state, or local level. DOE anticipates continued engagement and productive involvement of members of the public and the regulatory community in subsequent activities that may follow this HLW interpretation, including the NEPA process described in the NOI.

III. Response to Comments

DOE received 5,555 comments on its proposed interpretation that break down to roughly 360 distinct comments (that is, excluding duplicative form comments). DOE received both critical and supportive comments, with the majority of comments expressing concerns or questions relating to health and safety and environmental outcomes associated with the interpretation. The following sections of this Supplemental Notice provide additional detail and explanation of DOE's HLW interpretation in response to the significant and recurring comments received. DOE is providing this additional information in response to comments, while recognizing that not all of this information is central to, or necessary for an understanding of DOE's interpretation. To aid in organizing the comments, this section categorizes public comments in broad terms relating to the legal authority, technical basis, implementation, and other comments on the HLW interpretation.

A. Legal Authority for HLW Interpretation

As DOE explained in the October 10 Notice, DOE interprets the term ''high-level radioactive waste,'' as stated in the AEA and the NWPA, in a manner that defines DOE reprocessing wastes to be classified as either HLW or non-HLW based on the radiological characteristics of the waste and whether the waste can be disposed of safely in a facility other than a deep geologic repository. Having fully considered all comments received, DOE continues to believe that the HLW interpretation is legally sound, technically appropriate, and fully protective of human health and the environment.

DOE's purpose in issuing the interpretation in the form of an interpretative rule within the meaning of section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 553(b)) is to provide the public with a clear and transparent explanation of DOE's view of a specific legal question—the meaning of the term HLW, including the authority that Congress conferred on DOE through that term. DOE's interpretation is, however, only one factor in initiating a broader process of identifying potential options for disposing of reprocessing wastes that are determined to not require disposal in a deep geologic repository. DOE will continue its current practice of managing all its reprocessing wastes as if they were HLW unless and until a specific waste is determined to be another category of waste based on detailed technical assessments of its characteristics and an evaluation of potential disposal pathways.

1. DOE Authorities

Consistent with its long-standing authority under the AEA to ensure that radioactive waste from the United States' defense program is managed and disposed of in a safe manner, DOE has the legal authority to interpret the term HLW in the AEA and the NWPA to determine that certain of its reprocessing wastes are not HLW based on their radiological characteristics. This interpretation is consistent with the AEA, the NWPA, and Section 3116 of the 2005 Ronald Reagan National Defense Authorization Act (Section 3116, Pub. L. 108–375).

The significance of ''highly radioactive.'' Commenters stated that under the NWPA DOE lacks the legal authority to determine that certain reprocessing wastes are non-HLW based on their radiological characteristics because Congress defined HLW based only on its source. The plain language of the HLW definition contradicts this exclusively ''source-based'' interpretation.

The AEA and NWPA define HLW as:

> (A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and
>
> (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.

42 U.S.C. 10101(12); *see also* 42 U.S.C. 2014(dd). In Paragraph A, Congress limited HLW to those materials that are ''highly radioactive.'' This limiting term applies to all reprocessing waste, including the ''liquid waste produced directly in reprocessing'' and ''any solid material derived from such liquid waste.'' The use of the limiting term ''highly radioactive'' demonstrates that Congress intended to distinguish between waste that is ''highly radioactive'' and waste that is not. If Congress had intended to define all reprocessing waste as HLW regardless of its radiological characteristics, it would not have included the ''highly radioactive'' requirement and instead defined HLW as ''*all* waste material resulting from the reprocessing of spent nuclear fuel.'' Similarly, for ''any solid material derived from'' the ''liquid waste produced directly in reprocessing,'' Congress also specified that in addition to being ''highly radioactive'' it must also contain fission products in ''sufficient concentrations.''

The terms ''highly radioactive'' and ''sufficient concentrations'' are not defined in the AEA or the NWPA. By providing in Paragraph A that liquid reprocessing waste is HLW only if it is ''highly radioactive,'' and that solid material derived from liquid reprocessing waste is HLW only if it is ''highly radioactive'' and contains fission products in ''sufficient concentrations'' without further defining these standards, Congress left it to DOE, for its reprocessing wastes, to determine when the standards are met. That is what DOE has done through its interpretation. DOE has evaluated the meaning of those terms based on its historical knowledge, experience, and expertise in managing reprocessing wastes. DOE's interpretation is an articulation of the technical criteria that can be applied to individual waste streams on a case-by-case basis to determine whether the standard for HLW has been met. DOE also notes that in their comments on the interpretation, the NRC staff stated that they ''agree with the concept proposed in **Federal Register** October 10 Notice (83 FR 50909) that radioactive waste may be classified and disposed of in accordance with its radiological characteristics.'' DOE places significant weight on the NRC's views of matters relating to the safe management and disposal of radioactive waste, including this HLW interpretation.

Distinguishing between HLW and non-HLW based on the need for disposal in a deep geologic repository. Commenters stated that DOE's interpretation is circular, and that there is no basis for the interpretation that if waste does not require disposal in a deep geologic repository then it is not HLW. DOE disagrees. DOE's interpretation is consistent with the statutory text, the underlying purposes of the AEA and the NWPA, and the well-established principles of the NRC's regulatory structure for the disposal of low-level radioactive wastes (LLW).

As discussed above, without further defining the terms ''highly radioactive'' and ''sufficient concentrations,'' Congress left it to DOE to determine when reprocessing waste meets the standards. The statutory context is fundamental to determining the meaning of the terms ''highly radioactive'' and ''sufficient concentrations.'' Through the AEA Congress conferred on DOE the responsibility to ''provide for safe storage, processing, transportation, and disposal of'' reprocessing and other radioactive wastes resulting from the United States' defense program. *See* 42 U.S.C. 2121(a)(3), 5814, 7151(a). DOE's primary objective in fulfilling this statutory responsibility is to manage and dispose of radioactive waste in a manner that fully protects the public and the environment from the hazards posed by the waste. Similarly, a primary purpose of the NWPA is to identify those materials for which disposal in a deep geologic repository is the only method that would provide reasonable assurance that the public and the environment will be adequately protected from the radiological hazards the materials pose. *See* 42 U.S.C. 10131(b); 10101(12), (18). As the NRC has explained,

> Th[e] combination of highly-concentrated, short-lived nuclides together with other very long-lived nuclides has historically been described by the term 'high-level radioactive wastes' (HLW). There has long been a recognition that such waste materials require long- term isolation from man's biological environment . . .

Advance Notice of Proposed Rulemaking, *Definition of High-Level Radioactive Waste,* 52 FR 5992, 5993

(February 27, 1987). Deep geologic disposal is the internationally recognized and technically viable means to provide such long-term isolation for waste with both highly concentrated short-lived radionuclides and long-lived radionuclides. However, not all radioactive wastes have these properties, and therefore do not require the same disposal methods. Because not all radioactive wastes have the same radiological characteristics, there is a well-established statutory and regulatory regime for the safe and technically sound disposal of radioactive waste commensurate with the radiological hazard posed by the waste. Consequently, determining whether a particular reprocessing waste can be disposed of safely in a facility other than a deep geologic repository is the appropriate basis for differentiating between waste that is ''highly radioactive'' and waste that is not, and, for solid material, waste that contains fission products in ''sufficient concentrations'' and waste that does not.

In its regulations, the NRC has identified classes of LLW—Class A, B, or C—for which near-surface disposal is safe for public health and the environment. Waste that exceeds the Class C tables in 10 CFR 61.55 also may be safely disposed in a near-surface disposal facility under certain conditions. This waste classification regime is based on the concentration levels of a combination of specified short-lived and long-lived radionuclides in a waste stream, with Class C LLW having the highest concentration levels. In accordance with NRC regulations, 10 CFR 61.55(a)(2)(iv) and 10 CFR 61.58, waste that exceeds the Class C levels is evaluated on a case-specific basis to determine whether it requires disposal in a deep geologic repository, or whether an alternative disposal facility can be demonstrated to provide safe disposal.

Non-HLW Criterion 1. Because the NRC has long-standing regulations that set concentration limits for radionuclides in waste that is acceptable for near-surface disposal, it is reasonable to interpret ''highly radioactive'' to mean, at a minimum, radionuclide concentrations greater than the Class C limits. Waste that is at or below Class C limits does not have ''highly radioactive'' radionuclide concentrations because it can be, and routinely is, safely disposed in near-surface facilities that are proven to be protective of human health and the environment. In other words, because waste within Class C limits clearly does not require disposal in a deep geologic repository, it is not ''highly radioactive'' within the meaning of the HLW definition, and therefore, non-HLW.

Non-HLW Criterion 2. As stated above, solid material derived from liquid reprocessing waste is HLW only if it is ''highly radioactive'' and contains fission products in ''sufficient concentrations.'' Where solid material derived from liquid reprocessing waste exceeds the Class C limits (and could, therefore, be considered ''highly radioactive''), it is appropriate to analyze also whether the waste contains ''sufficient concentrations'' of fission products in combination with long-lived radionuclides such that disposal in a deep geologic repository is necessary. As previously articulated, not all radioactive wastes are the same or require the same disposal methods. Only those wastes that have the characteristics of both high concentrations of short-lived radionuclides and long-lived radionuclides bear the hallmarks of a radioactive waste that is necessary for deep geologic disposal. Other disposal facilities may be capable of accepting the waste in compliance with the performance objectives of the facility, which means that the public and the environment can be effectively protected from harmful effects by safely disposing the waste in such a facility. Under DOE's interpretation, where solid material exceeds the NRC's Class C limits, such material can still be classified as non-HLW if technical analysis of the radiological characteristics of the waste demonstrates that it can be safely disposed in a facility other than a deep geologic repository. That is, analysis must show that a given waste can be safely disposed, considering the physical characteristics of a specific (non-geologic repository) disposal facility and a method of disposal compliant with the facility's performance objectives.

DOE and NRC authority under Paragraphs A and B of the HLW definition. Commenters stated that through its interpretation DOE is improperly attempting to assign to itself under Paragraph A of the HLW definition the authority that Congress assigned to the NRC. That is incorrect. The authority granted to the NRC in Paragraph B reflects Congress' intent for the NRC potentially to define other ''highly radioactive materials'' as HLW. DOE recognizes the NRC's authority on this point. DOE does not, however, agree with the commenters that by granting NRC, and not DOE, the authority to define non-reprocessing wastes as HLW, Congress explicitly or implicitly deprived DOE of its long-standing AEA authority to interpret this statutory term as it pertains to DOE reprocessing wastes. DOE manages a large inventory of legacy reprocessing waste from atomic energy defense activities, *e.g.,* nuclear weapons production. The structure of the HLW definition simply reflects Congress' recognition of the respective roles that each agency has played under the AEA since the responsibilities of the Atomic Energy Commission (AEC) were divided between DOE and the NRC in 1974.

The AEA vested in the AEC the exclusive responsibility to regulate the materials covered by the Act. *See* 42 U.S.C. 2201(b). With regard to the United States' defense program, the AEA expressly provided the AEC the authority to ''provide for safe storage, processing, transportation, and disposal of hazardous waste (including radioactive waste) resulting from nuclear materials production, weapons production and surveillance programs, and naval nuclear propulsion programs.'' 42 U.S.C. 2121(a)(3).

In 1974, Congress enacted the Energy Reorganization Act of 1974 (ERA), 88 Stat. 1233, as amended, 42 U.S.C. 5801 *et seq.,* which abolished the AEC and divided its functions between DOE's predecessor, the Energy Research and Development Administration (ERDA), and the NRC. *See* ERA, Sections 104, 201(f), Public Law 93–438, 88 Stat. 1233, 1237–38, 1242–44, 42 U.S.C. 5814, 5841(f). Under the ERA, the NRC was assigned responsibility for commercial licensing of nuclear power plants and related regulatory functions. 42 U.S.C. 5841(f). The NRC also acquired licensing authority over ERDA facilities in limited circumstances, including ''[f]acilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under such Act'' and ''facilities authorized for the express purpose of subsequent long-term storage of high-level waste generated by the Administration, which are not used for, or are part of, research and development activities.'' 42 U.S.C. 5842.

The ERDA was assigned all other AEC functions, including its weapons production and defense waste management authority. 42 U.S.C. 5814(c). The ERA also authorized the ERDA Administrator to ''prescribe such policies, standards, criteria, procedures, rules, and regulations as he may deem to be necessary or appropriate to perform functions now or hereafter vested in him.'' 42 U.S.C. 5815(a). In 1977, Congress abolished the ERDA and transferred its functions to DOE. *See* Department of Energy Organization Act

(DOEOA) Section 301(a), Public Law 95–91, 91 Stat. 565, 577–78 (1977), 42 U.S.C. 7151(a). Among other things, the DOEOA specifically assigned responsibility for the military applications of nuclear energy to DOE. Additionally, the DOEOA made clear that DOE retained all of ERDA's radioactive waste management responsibilities and authorities including: (1) Control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and other materials associated with such facilities; (2) control over all existing nuclear waste in the possession or control of the Government; (3) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes; and (4) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes. *See* 42 U.S.C. 7133(a)(8)(A), (B), (C), and (E). ''This left control over existing government facilities and defense nuclear waste in DOE.'' *NRDC* v. *Abraham,* 244 F.3d 742, 745 (9th Cir. 2001).

Accordingly, it is well within DOE's authority and responsibility to interpret Paragraph A of the HLW definition to determine whether reprocessing wastes within the DOE complex meet the technical criteria of ''highly radioactive'' and ''sufficient concentrations.'' Paragraph B, on the other hand, is a different type of function granted to NRC. The authority to define other ''highly radioactive materials'' that require permanent isolation is consistent with the NRC's licensing and regulatory role under the AEA and NWPA. In assigning NRC this authority, however, Congress did not change DOE authority under the AEA to interpret this statutory term to ensure it is safely storing, managing, and disposing of its radioactive wastes in accordance with applicable law.

Notwithstanding the clear division of responsibilities, DOE and the NRC have historically worked closely together on various issues relating to the safe management and disposal of radioactive waste, including HLW. As stated above, DOE places significant weight on the NRC staff's agreement with the concept in DOE's interpretation that HLW, like other radioactive waste, may be disposed of in accordance with its radiological characteristics.

HLW interpretation and Section 3116. Commenters stated that DOE's interpretation is inconsistent with Section 3116. DOE disagrees. The HLW interpretation does not impact DOE's intent and obligation to comply fully with Section 3116. In addition, Section 3116 does not limit DOE's long-standing authority under the AEA to interpret the definition of HLW or to apply that interpretation to reprocessing wastes that are not covered by Section 3116.

Section 3116 sets forth a process for determining that specified DOE reprocessing waste is not HLW. This Section 3116 process is similar to the process in DOE's Order 435.1, *Radioactive Waste Management,* the accompanying DOE Manual 435.1–1, *Radioactive Waste Management Manual,* (Manual), and the accompanying DOE Guide 435.1–1, *Implementation Guide* for use with DOE M 435.1–1 (Implementation Guide) for determining whether certain reprocessing wastes are ''wastes incidental to reprocessing,'' or WIR. *See* Public Law 108–375, 2004, Section 3116(a). Section 3116 applies to two ''covered States''—South Carolina and Idaho. *Id.* Section 3116(d). However, Section 3116 does not apply to reprocessing wastes that are transported out of South Carolina or Idaho and disposed of in a different state. *See id.* Section 3116(c). Section 3116 also specifies that ''nothing in this section establishes any precedent or is binding'' outside of South Carolina and Idaho. *Id.* Section 3116(e). In short, in enacting Section 3116, Congress did not limit DOE's long-standing authority under the AEA to interpret the term HLW or to apply this interpretation to reprocessing wastes that are disposed of in states other than Idaho and South Carolina.

2. DOE's Explanation of Its HLW Interpretation

Commenters stated that the HLW interpretation represents a change in DOE's existing policy for determining whether reprocessing waste is HLW, and that DOE did not adequately explain the basis for that change. Some commenters also stated that DOE should update its existing authorities to be consistent with the HLW interpretation. Other commenters stated that the HLW interpretation is unnecessary in light of DOE's existing mechanisms for determining whether reprocessing waste is HLW.

As noted above, through this Supplemental Notice DOE is only stating its understanding of the proper interpretation of the statutory text in light of the language and purpose of the two Acts, which is also consistent with Congress's direction and the expert community's consensus, while remaining fully protective of the health and welfare of the public and the environment. This interpretation does not, by itself, change existing applicable DOE regulations, orders, or policies regarding the classification of wastes or the treatment of any particular waste stream. Implementation of this interpretation at a particular site or for a particular waste stream, and any changes to existing policies that may be appropriate in light of this interpretation will be the subject of subsequent actions.

DOE acknowledges, as explained below, that the HLW interpretation in this Supplemental Notice differs from the existing WIR evaluation method under DOE Order 435.1 for determining whether reprocessing waste is HLW or WIR that is set forth in the Manual and Implementation Guide. DOE disagrees, however, that the HLW interpretation is unnecessary in light of the existing DOE Order 435.1 WIR evaluation method. DOE believes in light of further consideration that the HLW interpretation is the proper reading of the statutory definitions of that term, informed by DOE's expert understanding of the risks presented to the public and the environment by different types of reprocessing wastes. As explained elsewhere in this Supplemental Notice, hereafter DOE will consider what actions may be needed and appropriate to update applicable DOE directives in light of this interpretation and will, as part of that process, assess whether any additional elements of its current policies should be amended. Accordingly, any changes in policy, including revisions to DOE Order 435.1, related documents, or the WIR process and its application, will be addressed in future actions.

DOE Order 435.1 and WIR. Covering a broad range of topics, DOE Order 435.1 defines how DOE—through its programs and contractors—implements its AEA authority to manage radioactive waste at DOE-owned or leased facilities. The Order is intended to ensure that waste characterization, treatment, disposal, and environmental monitoring activities are conducted in a manner that protects the public, workers, and the environment from exposures to doses of radiation in excess of specified standards. DOE Order 435.1(4.b.). The Manual sets forth in more detail the requirements and responsibilities for managing waste under the Order. The Implementation Guide discusses acceptable methods for meeting the requirements of the Order and Manual.

DOE Order 435.1 breaks down DOE's waste management activities by waste type including HLW, transuranic (TRU) waste, and LLW. With regard to HLW, the Manual also formalizes the long-

standing concept that ''WIR'' is not HLW because its radioactive characteristics do not pose the elevated risk to human health and the environment that HLW poses. According to the Manual, ''waste resulting from reprocessing spent nuclear fuel that is determined to be incidental to reprocessing is not high-level waste, and shall be managed as [TRU] or [LLW], as appropriate.'' Manual at II.B.[1]

The 435.1 WIR Criteria provide that wastes being managed as HLW can be determined to be WIR, *e.g.,* managed as LLW,[2] where they meet the following criteria (DOE M 435.1–1, Chapter II–B(2)(a), page II–1,2):

(1) Have been processed, or will be processed, to remove key radionuclides to the maximum extent that is technically and economically practical;

(2) Will be managed to meet safety requirements comparable to the performance objectives set out in 10 CFR part 61, subpart C, *Performance Objectives*; and

(3) Are to be managed, pursuant to DOE's authority under the *Atomic Energy Act of 1954,* as amended, and in accordance with the provisions of Chapter IV of this Manual, provided the waste will be incorporated in a solid physical form at a concentration that does not exceed the applicable concentration limits for Class C low-level waste as set out in 10 CFR 61.55, Waste Classification; or will meet alternative requirements for waste classification and characterization as DOE may authorize.

If DOE determines that waste meets the 435.1 WIR Criteria, the waste is not HLW and DOE manages it as LLW or TRU waste.

The above describes the WIR process in DOE Manual 435.1–1. DOE has applied the 435.1 WIR Criteria in limited circumstances to determine that certain waste is not HLW. The 435.1 WIR Criteria would not apply to reprocessing waste disposed of in South Carolina or Idaho, pursuant to Section 3116. As previously noted, reprocessing wastes that are transported out of South Carolina or Idaho and disposed of in a different state are not covered by Section 3116.

WIR Criteria and the HLW interpretation. While the development of the 435.1 WIR Criteria was an important step forward in DOE's management of HLW because it allows DOE in limited circumstances to determine that certain waste is not ''highly radioactive,'' DOE has re-examined the statutory term HLW. At this time, however, DOE is not making any decisions based upon this re-examination and is not modifying DOE Manual 435.1–1 or the current management of existing wastes. DOE will address such issues as it examines future application to any specific waste, and such examination will occur only with appropriate public engagement and full compliance with other legal obligations such as compliance with the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 *et seq.*).

With respect to the HLW interpretation, however, nothing in the statutory text of the AEA or the NWPA requires that radionuclides be removed to the maximum extent technically and economically practical prior to determining whether waste is HLW. DOE's HLW interpretation is consistent with and informed by analysis of the risk presented to the public and the environment from reprocessing wastes. Reprocessing wastes that already meet existing regulatory requirements for safe disposal as LLW without any radionuclide removal do not present risks to the public and the environment that would necessitate their classification as HLW under the AEA and NWPA. Accordingly, DOE Manual 435.1–1's requirement to remove radionuclides to the maximum extent technically and economically practical is not a component of DOE's HLW interpretation as reflected in this Supplemental Notice. However, DOE continues to operate under DOE Manual 435.1–1 and any change to the terms or applicability of that document will be the subject of appropriate agency action.

Why DOE is issuing the HLW interpretation. Through the AEA, Congress conferred on DOE the responsibility of safely and permanently disposing of the radioactive waste from the United States' defense program, including reprocessing wastes. *See* 42 U.S.C. 2121(a)(3), 5814, 7151(a). While DOE has made important progress in fulfilling this responsibility, there has been widespread recognition that the current approach to managing and disposing of these wastes has shortcomings, and that alternative strategies should be explored and developed.

Most recently, in enacting the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), Congress specifically tasked DOE with ''conduct[ing] an evaluation of the feasibility, costs, and cost savings of classifying covered defense nuclear waste as other than high-level radioactive waste, without decreasing environmental, health, or public safety requirements.'' Public Law 115–91, Sec. 3139. DOE's report responsive to Congress' directive is currently undergoing interagency review. Even before this Congressional directive, in 2012, for example, the Blue Ribbon Commission on America's Nuclear Future (BRC)—a group of experts, including a former NRC Chairman, tasked by the Secretary of Energy at the request of the President with reviewing the existing policies for managing the back end of the nuclear fuel cycle—reported that ''[t]he most important overarching criticism of the U.S. waste classification system is that it is not sufficiently risk-based. Rather, it is (for the most part) directly or indirectly source-based—that is, based on the type of facility or process that produces the waste rather than on factors related to human health and safety risks.'' (Blue Ribbon Commission on America's Nuclear Energy Future, Report to the Secretary of Energy, January 26, 2012 [3]). The BRC found that ''the definition of HLW, in particular, has attracted the most criticism'' for being insufficiently risk-based, noting that ''to the extent that terms such as 'highly radioactive,' 'sufficient concentrations,' and 'requires permanent isolation' are used to define HLW, they have not been quantified.'' *Id.* The BRC explained that this is ''potentially problematic because the liquid waste stream from the front end of a reprocessing plant can have a broad range of characteristics—including characteristics that may be altered by time (decay) or by subsequent processing (which DOE has done with many of its defense wastes). The waste that remains after these changes, while still classified as HLW, may have characteristics similar to TRU waste or LLW.'' *Id.*

Consistent with Congress' directive, the BRC's report, and other similar reports and findings, DOE has re-examined its existing authorities and the statutory requirements for managing and disposing of reprocessing wastes, including the HLW definition and the 435.1 WIR Criteria. Consistent with the statutory text, DOE's HLW interpretation is more fully based on radiological characteristics that determine risk. As such, it is the first step in a process of potentially opening new disposal pathways for reprocessing

[1] The Manual sets forth two processes for determining that waste is WIR, not HLW. First, under the ''citation method,'' a limited number of secondary solid waste items that fall on a precompiled list are excluded from HLW, including ''laboratory items such as clothing, tools, and equipment.'' Second, the ''evaluation method'' includes a consideration of the risk-related characteristics of the waste (435.1 WIR Criteria).

[2] Under the WIR process, certain reprocessing wastes may also be managed as TRU waste, in accordance with DOE M 435.1–1, Chapter II–B(2)(b), page II–2.

[3] *The BRC report is available at: https://www.energy.gov/sites/prod/files/2013/04/f0/brc_finalreport_jan2012.pdf.*

waste with lower levels of radioactivity, while protecting human health and the environment. This process will proceed on a site-by-site basis and involve, as appropriate, various stakeholders including the NRC, the Environmental Protection Agency (EPA), states, tribes, and others.

DOE's interpretation of HLW could, upon implementation, provide a range of benefits to both DOE and the public, including: Enhancing safety at DOE sites by using lower-complexity waste treatment and immobilization approaches to reduce the risks of long-term waste storage and management; reducing time that untreated radioactive waste is stored on-site at DOE facilities; furthering DOE's commitment to state and local communities to move radioactive material out of the generator state; utilizing mature and available commercial facilities and capabilities to shorten mission completion schedules and reduce taxpayer financial liability; aligning with international guidelines for management and disposal of radioactive waste based on radiological risk; and establishing risk-informed disposal practices, consistent with current regulatory requirements for LLW.

3. Interpretative Rule

Commenters stated that DOE's HLW interpretation should be issued as a regulation. Commenters also stated that DOE should provide the public with more information about how the Department intends to implement the interpretation at each site where reprocessing waste is stored, and that DOE should provide additional opportunities for public participation beyond the 90 days of public comment provided on the interpretation.

DOE wishes to make clear that an interpretative rule is a type of rule or regulation within the meaning of those terms in the APA, *See* 5 U.S.C. 551(4). It is well established under the APA that agencies have the authority to issue interpretative rules, and that these rules are a valuable tool for an agency to use to advise the public prospectively, and in a clear and transparent manner, of the agency's construction of a statute it administers. As such, an interpretative rule does not have force and effect on its own. It is not until the agency takes an action in which the interpretation is applied that the interpretation can have an effect and, even then, only through that subsequent action.

When DOE considers this statutory interpretation in the context of taking an action in the future with regard to specific wastes, it will evaluate its internal orders and policies to determine if any require revision to accommodate this interpretation, and if so, DOE will follow applicable procedures to make any necessary changes. However, DOE's internal system of orders are not rules or regulations under the APA, and do not themselves constitute agency action.

Furthermore, DOE disagrees that the public required additional information about how DOE intends to implement the HLW interpretation in order to comment on it. The wealth of substantive comments received, including comments that led to revisions in the HLW interpretation as reflected in this Supplemental Notice, indicate that the public had a meaningful opportunity to comment on DOE's general interpretation. Finally, DOE disagrees that additional process is necessary before DOE adopts the interpretation. As DOE indicated in the request for comments and is reiterating in this Supplemental Notice, there will be additional processes after the interpretation has been issued but before any specific waste classification or disposal decisions are implemented, as outlined in greater detail below.

State, Tribal, Local and Public Involvement. The Department will work closely with State and local officials, regulators, tribal governments, and stakeholders, on a site-by-site basis, to ensure compliance with applicable programmatic requirements and regulatory agreements before classifying any reprocessing waste as non-HLW under the HLW interpretation or consequent disposal decisions.

Path Forward. DOE expects that, depending on site and waste specific facts, some of its reprocessing waste will be found to qualify for non-HLW classification, while other waste will continue to be managed, and ultimately disposed of, as HLW. The development of the path forward for reprocessing waste classified as non-HLW, and decisions flowing from that path, will be dependent on executing a number of technical and regulatory steps (listed in no particular order, recognizing some steps may occur simultaneously), including, but not limited to:

- Identifying potential disposal facilities.
- Evaluating disposal facility waste acceptance criteria and impacts on performance objectives of the disposal facility (the licensee or permittee for the disposal facility may also be required to obtain appropriate regulatory authorizations to accept waste).
- Coordinating with stakeholders.
- Preparing or revising necessary permits.
- Preparing NEPA or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) documentation, if needed, to retrieve, treat, package, characterize, and certify the wastes for disposal.
- Modifying affected contracts, if necessary.
- Including a fiscal year budget request to plan for and/or execute disposal of the waste stream.
- Initiating project planning and execution activities in accordance with DOE Order 413.3B, *Program and Project Management for the Acquisition of Capital Assets,* as appropriate.
- Developing waste loading, packaging, and transportation cask systems as needed to remove the waste from the site and deliver to the disposal facility.

As explained above and in the NOI, DOE's first step in determining whether and how to implement the HLW interpretation specific to a particular waste stream is initiating a NEPA process to analyze the potential environmental impacts associated with disposing of certain waste from the Savannah River Site at a commercial disposal facility located outside South Carolina licensed by either the Nuclear Regulatory Commission (NRC) or an Agreement State under 10 CFR part 61 to receive low-level radioactive waste. At this time, DOE is not considering whether to implement the HLW interpretation at any other site or for any other waste stream. While DOE will continue in the normal course to evaluate its waste inventories and related management and disposal options, and expects to engage openly with stakeholders regarding potential future opportunities to implement the HLW interpretation more broadly, any decisions about whether and how the interpretation will apply to other wastes at any specific site will be the subject of subsequent actions.

4. West Valley Demonstration Project

Commenters stated that DOE did not address the application of the interpretation to the West Valley Demonstration Project (WVDP) in New York. As commenters pointed out, the WVDP operates under a distinct statutory and regulatory basis pursuant to the West Valley Demonstration Project Act (Pub. L. 96–368), which provides a definition of HLW separate from the AEA and the NWPA. As such, DOE is now clarifying that: (1) The interpretation does not apply to the reprocessing wastes from the WVDP governed by Public Law 96–368; and (2) the interpretation therefore will not be used in connection with the disposition

of any reprocessing wastes from the WVDP.

5. Compliance With the National Environmental Policy Act

Commenters stated that the HLW interpretation is a major federal action affecting the quality of the human environment, and that DOE is required to prepare a NEPA analysis that specifically addresses the potential environmental impacts of the interpretation. DOE disagrees that the HLW interpretation requires the NEPA analysis suggested by the commenters.

As discussed above, through this Supplemental Notice, DOE is only stating its understanding of the proper interpretation of the statutory text in light of the language and purpose of the two Acts. Again, issuance of this Notice does not change how DOE will manage any particular reprocessing wastes, and it does not commit DOE to any specific disposal pathways for any reprocessing wastes. Rather, DOE's interpretation helps initiate a waste-specific decision-making process that will include appropriate engagement with stakeholders before any final decisions could or will be made that potentially would result in any environmental impacts. As explained above, and in the NOI, DOE is separately initiating a NEPA process to study the potential environmental impacts associated with implementing the interpretation to dispose of certain waste from the Savannah River Site at a commercial disposal facility located outside South Carolina licensed by either the Nuclear Regulatory Commission (NRC) or an Agreement State under 10 CFR part 61 to receive low-level radioactive waste. If, in the future, DOE proposes an additional action to which NEPA would apply, such as implementation of this interpretation with respect to other specific wastes, DOE will likewise analyze such a proposal pursuant to NEPA.

B. Technical Basis for HLW Interpretation

DOE is committed to the safe and environmentally sound disposal of all its radioactive waste, and the HLW interpretation enhances rather than lessens DOE's commitment to that outcome. Commenters expressed concern that, in effect, DOE's HLW interpretation would lead to the less rigorous and safe disposal of radioactive wastes without a sufficient technical basis. However, the source of the waste does not dictate its safe disposal—the radiological characteristics of the waste and the requirements of the disposal facility operate together to ensure safe disposal. Reprocessing wastes that meet the criteria for non-HLW can be safely disposed along with other non-reprocessing wastes (with similar waste characteristics) that meet the disposal facility's requirements. The requirements that ensure the health and safety of the public, workers, and the environment are long-standing and embedded in DOE's and the NRC's regulations and implementing procedures and documents (*e.g.,* design, permitting, and operations processes for disposal of LLW). All commercial and DOE disposal facilities must be designed, constructed, operated, and closed to meet relevant safety standards, including performance objectives. Commercial LLW disposal facilities are licensed by either the NRC or Agreement States under 10 CFR part 61. LLW disposal facilities owned by DOE must be authorized by DOE in accordance with DOE Order 435.1 and associated manuals, guides, and other directives. Tank closures in the states of Idaho and South Carolina must comply with Section 3116, while tank closures in Washington must comply with the requirements of DOE Order 435.1.

The HLW interpretation and the two criteria for non-HLW are based on well-established approaches for waste classification and disposal. The first criterion is derived directly from the NRC's waste classification system established in the 1980's under 10 CFR 61.55. The second criterion is consistent with both the NRC's alternative classification system (10 CFR 61.58, *Alternative Requirements for Waste Classification and Characteristics,* and 10 CFR 61.55(a)(2)(iv), *Waste Classification*) and DOE Manual 435.1–1, which regulates the safety of LLW disposal facilities according to demonstrated compliance with public health and worker safety-based performance objectives. The NRC's performance objectives for commercial LLW disposal facilities (10 CFR part 61, subpart C) and the DOE performance objectives for DOE LLW disposal facilities (DOE M 435.1–1, Chapter IV, Paragraph P) are comparable in their standards and focus on protecting the environment, workers, and the public.

Both criteria 1 and 2 directly incorporate the requirement that a reprocessing waste must meet the performance objectives of a LLW disposal facility to be determined as non-HLW. As further explained below, performance objectives set forth the overarching radiological standards necessary to protect the health and safety of individuals and the general population from radiological releases, both during operation and following the closure of the disposal facility. Disposal facilities have other requirements that must be met for disposal of the waste, including for example satisfaction of waste acceptance criteria (WAC). The WAC are the technical and administrative requirements a waste must meet to be accepted at a disposal facility (*e.g.,* waste characterization, waste form acceptability, quality assurance), and are established to ensure the disposal facility, in total, meets its safety-based performance objectives.[4]

Although DOE's plain reading of the statutory definition of HLW stands on its own, the following information is provided to further public understanding of the interpretation from a technical perspective.

1. Criterion 1—Waste At or Below Class C LLW Limits

Criterion 1, as stated in the October 10 Notice, provided that a reprocessing waste is non-HLW if the waste: ''does not exceed concentration limits for Class C low-level radioactive waste as set out in section 61.55 of title 10, Code of Federal Regulations.'' This criterion has been revised to clarify that a waste must also meet the performance objectives of a disposal facility. The revised criterion provides that a reprocessing waste is non-HLW if the waste: ''does not exceed concentration limits for Class C low-level radioactive waste as set out in section 61.55 of title 10, Code of Federal Regulations, and meets the performance objectives of a disposal facility.'' This criterion would be applicable only to DOE waste suitable for off-site disposal at a commercial disposal facility regulated by the NRC or an Agreement State.

Commenters offered a number of observations about criterion 1, as originally stated. Commenters noted that this criterion does not require that the waste comply with the performance objectives of a LLW facility, only that it meet the 10 CFR 61.55 concentration limits. Other commenters believed it to be unreasonable because, for example, it would permit DOE to convert HLW to non-HLW by dilution or concentration averaging (*e.g.,* mixing with grout); DOE reprocessing wastes have different radionuclides than commercial LLW; and DOE would need to employ statistical sampling to accurately characterize waste for the purposes of assessing whether it meets the Class C

[4] Each disposal facility has its own WAC, which are dictated in part by the physical characteristics of a site. An example of a site-specific WAC for the WCS commercial disposal facility in Texas is available at: *http://www.wcstexas.com/pdfs/forms-and-docs/Waste%20Acceptance%20Criteria-a.pdf.*

standard. On the other hand, several commenters believed this criterion was reasonable based on its technical merit, and supported DOE in its technical rationale for this criterion. These comments are addressed below; a comparison of NRC and DOE safety goals and performance objectives for LLW disposal facilities is provided in Appendix A of this document.

Compliance with performance objectives. In response to comments, DOE has revised this criterion to expressly state that the reprocessing waste must meet the performance objectives of a disposal facility. DOE understands that a waste meeting the concentration limits in the tables in 10 CFR 61.55 alone is not sufficient to effectuate the disposal of non-HLW at a disposal facility. If a certain reprocessing waste stream is determined by waste characterization data and analysis to have concentrations satisfying Class A, B, or C using the 10 CFR 61.55 tables, and meets the performance objectives of a disposal facility, then the waste stream is non-HLW. This process is consistent with how DOE disposes of non-reprocessing waste (*e.g.,* soils and debris from environmental restoration and decontamination and decommissioning [D&D] of nuclear facilities) that the Department determines is appropriate for DOE disposal facilities or off-site commercial disposal. The process is also consistent with how industry routinely disposes of LLW in commercial disposal facilities.

Concentration Averaging. Application of DOE's interpretation would not result in improper dilution of a reprocessing waste stream. Dilution of a waste stream to meet concentration limits is not permitted by DOE (Implementation Guide, Section II–A, page II–4) or the NRC (*Concentration Averaging and Encapsulation Branch Technical Position,* Revision 1 (February 2015)). Some types of stabilization (*e.g.,* grouting), solidification, or other treatment would result in reductions of radionuclide concentrations. However, this is not dilution if stabilization or solidification is required by disposal sites' waste acceptance criteria to immobilize radioactive constituents and meet long-term performance objectives. Grout, for example, is a proven safe and effective technology that continues to be used by DOE and other national and international parties to stabilize radioactive wastes, including certain tank wastes, for disposal. Use of stabilization agents for this purpose is consistent with the NRC's *Concentration Averaging and Encapsulation Branch Technical Position,* which allows mixing of nonradioactive constituents with radioactive waste (*e.g.,* solidification, encapsulation, or additives used in thermal processing) provided the mixing has a purpose other than reducing the waste classification, such as waste stabilization or process control. Furthermore, the addition of stabilization agents to the waste prior to disposal is often necessary to meet the NRC requirements in 10 CFR 61.56, *Waste characteristics* (*e.g.,* to ensure structural stability of the waste form).

Radionuclides in DOE reprocessing waste. Commenters noted that DOE reprocessing wastes are unique, and it may be improper to consider some DOE reprocessing wastes as comparable to the LLW classification concentration limits in the NRC regulations that are based on generic LLW from the commercial sector. Commenters noted that some DOE reprocessing waste streams, in particular those that are not currently treated, may contain unique radionuclides. This does not mean that the criterion is improper, only that, as DOE has stated in the October 10 Notice and this Supplemental Notice, waste classification and any disposal decision would not be made until DOE completes waste characterization, among other prerequisite actions (*e.g.,* applicable NEPA compliance). The results of this analysis, and the ability to meet performance objectives at the intended disposal facility would dictate the ultimate waste classification for disposal purposes.

Regarding 10 CFR 61.55, table 1 addresses seven specific radionuclides and alpha emitters with half-lives greater than five years, and table 2 includes four additional specific radionuclides with the Class C limits. These nuclides identified by NRC are the most mobile and problematic of all possible key radionuclides and their concentration determine the classification of the waste. Regardless of classification, compliance with performance objectives is ensured through compliance with the disposal facility waste acceptance criteria for all key radionuclides. For DOE facilities, which do not follow the 10 CFR 61.55 waste classification tables, and the NRC/Agreement State facilities, the full range of radionuclides would be considered as part of the regulatory review of a facility's ability to meet applicable performance objectives.

Sampling. DOE will continue to use the existing framework of guidelines, best practices, regulations, and other mechanisms to ensure that each waste stream—whether from reprocessing or other sources—is properly characterized before it is received by a treatment, storage, or disposal facility. DOE follows established practices to characterize and document radioactive waste in sufficient detail to ensure safe management and compliance with the waste acceptance requirements of any facility receiving the waste. These practices are described in DOE M 435.1–1 (*e.g.,* Chapter II–L, page II–5, and Chapter IV–1, page IV–4); DOE G 435.1–1 (*e.g.,* Chapter II–L, page II–78, and Chapter IV–I, page IV–70); EPA guidance (*e.g.,* Hazardous Waste Test Methods/SW–846, Guidance on Systematic Planning Using the Data Quality Objectives Process, etc.); NRC guidance (*e.g., Concentration Averaging and Encapsulation Branch Technical Position*); DOE or commercial facility waste acceptance criteria; and DOE waste analysis plans and sampling and analysis plans for specific waste streams or activities (*e.g.,* tank waste retrieval); and other documents.

2. Criterion 2—Waste Above Class C Limits

Criterion 2, as stated in the October 10 Notice, provided that a reprocessing waste is non-HLW if the waste: ''does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable regulatory requirements.'' This criterion has been revised from ''applicable regulatory requirements'' to ''applicable requirements.'' The revision was made to more precisely reflect that performance assessments are conducted pursuant to DOE and NRC requirements, guidance, and standards.

Commenters raised several concerns about criterion 2, as originally stated. Comments regarding this criterion centered on DOE as a self-regulator, with the ability to unilaterally determine or change performance standards for its own facilities, and DOE's reliance on performance assessments. Commenters also noted more specific concerns, such as DOE's use of performance objectives rather than waste acceptance criteria and the need for DOE to counteract the purported motivation of a commercial disposal facility to accept any waste for a profit. As with criterion 1, these comments are addressed below, and Appendix A of this document contains a comparison of NRC and DOE safety goals and performance objectives for LLW disposal facilities.

DOE regulatory role. Congress conferred on DOE the authority to, in certain circumstances, self-regulate its

own radioactive waste management and disposal in accordance with the AEA, as amended, and other statutes. Where DOE disposes of its wastes at NRC or Agreement State licensed facilities, DOE is not the regulator and is subject to the same requirements and oversight as any private customer. While DOE has self-regulatory authority in certain circumstances, that does not mean DOE operates with unfettered discretion and without oversight. DOE is subject to various levels of independent internal and external oversight making it accountable to comply with an integrated framework of laws and technical standards to protect public health, safety, and the environment. Contrary to the concerns of some commenters, DOE's internal governing documents (*e.g.,* DOE Order 435.1, and associated manual and guide) represent a mature and robust system to address the protection of workers, public health and safety, and the environment for all DOE onsite radioactive waste management, as well as environmental restoration activities resulting in off-site management and disposal of radioactive waste. Many of the current DOE compliance-related actions revolve around waste and material disposition that are governed by, among other external regulatory regimes: CERCLA; Resource Conservation and Recovery Act (RCRA) or industrial waste water regulations; and regulatory agreements.

In addition, there are several organizations involved in oversight of DOE's Office of Environmental Management and that office's waste management and disposal activities, including: State agencies and EPA for activities under RCRA and CERCLA; the Defense Nuclear Facilities Safety Board (DNFSB) for defense nuclear facilities; DOE's Low-Level Waste Disposal Facility Federal Review Group (LFRG) [5] for radioactive waste disposal and closure of liquid waste tanks; DOE's Office of Environmental, Health, Safety & Security for establishing radiation protection standards through DOE orders and regulations; and DOE's Office of Enterprise Assessment for independent oversight and enforcement functions covering all DOE program offices.

Other forms of guidance or external accountability exist such that it would be highly difficult and unlikely for DOE to unilaterally change its requirements to be inconsistent with established norms and regulatory requirements for radioactive waste management. For example, the National Council on Radiation Protection and Measurements (NCRP), a Congressionally-chartered corporation (Pub. L. 88–376, July 14, 1964), plays a key role supporting radiation protection by providing independent scientific analysis, information, and recommendations that represent the consensus of leading scientists. NCRP draws from collaboration with the International Commission on Radiological Protection (ICRP), which has developed and maintained the International System of Radiological Protection used world-wide as the common basis for radiological protection standards, legislation, guidelines, programs, and practice.

Further, the Interagency Steering Committee on Radiation Standards (ISCORS) operates at the federal level to ensure that comparable standards of protection are afforded to workers, the public, and the environment across agencies that develop and enforce regulations for nuclear-related activities and facilities. DOE is a member of the ISCORS, which is comprised of eight Federal agencies, three Federal observer agencies, and two state observer agencies that facilitate consensus on acceptable levels of radiation risk to the public and workers, and promote consistent risk approaches in setting and implementing standards for protection from ionizing radiation. The NRC and EPA play prime roles on ISCORS and, like DOE, set standards for the level of acceptable risk from radiation exposures by considering ICRP and NCRP recommended guidelines. Unilateral proposals to change practices would be met with significant scrutiny and oversight from ISCORS, as the actions of one agency reflect on policies in other agencies.

Performance objectives and performance assessments. Several commenters were skeptical about DOE's reliance on performance assessments and questioned whether such assessments provide the necessary level of technical rigor, particularly when used for LLW disposal versus HLW or spent nuclear fuel (SNF) disposal, which account for longer compliance time periods, to ensure safe disposal of non-HLW. Also, commenters noted the lack of regulatory standards for a performance assessment and the potential for inconsistent application across disposal sites.

Performance objectives are the regulatory means by which NRC and DOE set forth the overarching radiological standards necessary to protect the health and safety of individuals and the general population from radiological releases, both during operation and following the closure of the disposal facility (*e.g.,* both DOE and NRC set the performance objective to ensure protection of the general population at a dose of no more than 25 millirem annually [DOE M 435.1–1, Chapter IV–P(1)(a), page IV–9, and 10 CFR 61.41]).

Performance assessments (PA) are used by the NRC and other regulatory bodies as a universally utilized approach to radioactive waste disposal to demonstrate how performance objectives will be met. The PA is the process, model, or collection of models used to estimate future releases of radionuclides to the environment and potential doses to human receptors. NRC has specific and detailed requirements, guidance and standards applicable to the conduct of a performance assessment: NUREG 1573, *Performance Assessment Methodology for Low-Level Radioactive Waste Disposal Facilities.* DOE has comparable requirements set forth in DOE M 435.1–1 (Chapter IV–P(2), page IV–11), and DOE *Standard Disposal Authorization Statement and Tank Closure Documentation (*(DOE–STD–5002–2017, Chapter 2).

The disposal facility's wide-ranging requirements—derived from the performance objectives of the facility and coupled with other quantitative and qualitative elements, *e.g.,* waste acceptance criteria, defense-in-depth safeguards, sensitivity and uncertainty analyses, and waste form/disposal facility stability considerations—form an integrated framework to provide confidence that the disposal facility will perform safely to protect the public and the environment.

The HLW interpretation does not change, and will not require any changes to NRC or DOE regulatory requirements or facility performance objectives. The same high standards for safety and technical rigor will be maintained across commercial and DOE disposal sites, recognizing that each site will have its own site-specific requirements. In addition, the disposal facility's compliance period for ensuring protection of public health and safety is established by the regulator (*e.g.,* NRC or Agreement State) and will be applied in accordance with the radiological

[5] The LFRG is comprised of federal employees from DOE-Headquarters, the National Nuclear Security Administration, and DOE Field Elements with radioactive waste disposal facility responsibilities. Among its functions, the LFRG is charged with reviewing the underlying technical basis of a waste disposal facility, which may include, for example: Disposal facility performance assessments and composite analyses; appropriate CERCLA documentation; and other technical basis documentation (*e.g.,* monitoring plan and closure plan). The reviews are performed to provide management with reasonable assurance that the applicable performance objectives and measures will be met.

characteristics of the waste and the site-specific performance objectives of the disposal facility.

Other concerns. Other commenters raised the general concern that, under DOE's interpretation, commercial operators would be motivated by profit to accept wastes that may not be safe for disposal. DOE believes this concern is misplaced, given the integrity and rigor of the regulatory system governing the disposal of LLW at private facilities licensed or permitted by the NRC and Agreement States. LLW has been, and will continue to be, disposed of at commercial facilities in a safe and technically sound manner. DOE has no reason to find that the addition of its non-HLW to this system would cause any different or irresponsible action from commercial entities.

3. Technical Basis for Not Removing Key Radionuclides

Commenters were concerned by DOE's interpretation, which does not include the removal of key radionuclides ''to the maximum extent practicable'' as a condition for a reprocessing waste stream to be determined non-HLW. This concern related to all forms of disposal, whether in situ (*e.g.,* closure of a waste tank), or at a designated DOE or commercial LLW disposal facility. Commenters noted that this is an element of both the existing 435.1 WIR Criteria, and Section 3116.[6]

As previously explained, there is nothing in the statutory text of the AEA or the NWPA that requires radionuclides to be removed to the maximum extent technically and economically practical prior to determining whether waste is HLW. Rather, the statutory text is focused on examining a waste in terms such as whether it is highly radioactive, contains fission products in sufficient concentrations, or requires permanent isolation. As a consequence, DOE believes that reprocessing wastes that already meet existing regulatory requirements for safe disposal as LLW without any radionuclide removal do not present risks to the public and the environment that would necessitate their classification as HLW under the AEA and NWPA.

4. Tank Closures

Commenters, in particular government officials of states with underground radioactive waste tanks, voiced concern with DOE's approach to the extent it would result in classifying tank reprocessing wastes as non-HLW and disposing of it in place. Commenters believed the interpretation is unreasonable in its application to tank wastes, based on the concern that tank waste from reprocessing is highly radioactive as a matter of fact and, additionally, that this interpretation should not be applied to close tanks without retrieving wastes.

As noted previously and reiterated below, this Supplemental Notice does not propose or finalize any decisions about the classification or disposal of any waste stream, or this interpretation's potential application to the closure of waste tanks. DOE understands the complex history and practice with regard to tank closure activities, and existing arrangements that may affect implementation. In this case as with its other wastes, DOE will pursue any waste classification or disposal decisions in separate actions, in accordance with applicable law, regulations and agreements, and based on appropriate interactions with affected stakeholders and regulators.

C. Implementation and Other Comments on the HLW Interpretation

DOE received a number of comments, from state and local representatives, non-governmental organizations, and individual members of the public suggesting the need for and inquiring about more detailed information, *e.g.,* waste inventory amounts, wastes affected by a different classification, transportation routes, and new disposal locations that would result from the Department's implementation of its interpretation. In particular, commenters wanted to better understand DOE's approach with regard to state, local, and tribal consultation when evaluating and implementing disposal decisions; the NRC's regulatory role; confirmation of compliance with applicable federal and state environmental laws, regulations and agreements; potential environmental justice issues; impact on the Waste Isolation Pilot Plant (WIPP); and availability of space in LLW facilities with the addition of non-HLW.

DOE also received an assortment of comments not directly related to its interpretation. Some commenters wanted DOE to expand the scope of the interpretation to include all radioactive waste, specifically uranium-233 waste, while others questioned the need for the interpretation at all if DOE pursued the development of a deep geologic repository at Yucca Mountain for SNF and HLW disposal.

Information needs. The questions and issues raised by commenters seeking more information and details on implementation actions are important to DOE (and were constructive in assisting DOE with its criteria for non-HLW), and will be the subject of subsequent public interactions when DOE undertakes implementation. As stated in the October 10 Notice seeking public comment on the HLW interpretation, and equally applicable at this juncture, DOE is not by issuance of this interpretation making and has not made any decisions on the classification or disposal of any particular waste stream at any location. At this time, it is premature to conclude any detailed impact analyses or to provide specific implementation details or plans (*e.g.,* what reprocessing waste will go to what facility); DOE will not be changing how it manages or disposes of its reprocessing waste except pursuant to subsequent actions to implement this interpretation, which would include appropriate NEPA analysis for any particular proposed action, such as the NEPA process described in the NOI.

Notwithstanding that at present DOE has not made any implementation decisions, as mandated by law (Pub. L. 115–91, Sec. 3139), DOE prepared a Report to Congress providing in part the type of information requested by commenters (and several commenters specifically asked about the status of the report). The report is undergoing interagency review and will not be publicly available until that review is complete and the report is submitted to Congress.

Consultation and compliance. DOE will not undertake any implementation actions without appropriate interactions with applicable federal, state and local agencies, and Native American governments. The scope of implementation will be considered site by site, and conducted in full compliance with existing statutes, regulations, and DOE directives. Specifically, DOE will continue to comply with its responsibilities under existing requirements, agreements, consent orders or permits including: NEPA; CERCLA; RCRA; DOE Order 435.1 and its implementing documents; and Section 3116, applicable in Idaho and South Carolina. DOE will consider input from affected state, local, and tribal stakeholders, along with governing regulatory agencies.

NRC regulatory role. The Department fully supports the NRC in its statutory and regulatory role with respect to regulating commercial nuclear activities (including licensing disposal facilities), as well as its historical and established consultative role to DOE on the disposal of its reprocessing wastes determined to

[6] As noted elsewhere, the requirements of Section 3116 are not applicable to waste shipped out of South Carolina or Idaho and disposed of in another state.

not be HLW under DOE Order 435.1. DOE's interpretation does not change the NRC's existing authorities, *e.g.,* under Section 3116. DOE intends to maintain its strong relationship with the NRC, and will engage with the NRC on the best way to continue that relationship when and as it applies its HLW interpretation in the future.

Environmental Justice. Some commenters were concerned that DOE's interpretation violates the principles of environmental justice, specifically the impact on Native American nations and impacts on tribal lands from DOE's radioactive waste management and disposal decisions. DOE is committed to the principles of a government-to-government relationship with tribal populations as embodied in Executive Order (E.O.) 13175 and DOE's Order 144.1, as well as the 2010 United States' announcement supporting the United Nations Declaration of the Rights of Indigenous People. DOE also remains committed to build on the legacy of E.O. 12898 and the principles of environmental justice. In this and other applicable contexts, DOE will continue to work with all stakeholders, including interested tribal organizations and minority and low-income populations to ensure their interests are taken into account, consistent with environmental justice principles and applicable NEPA processes.

WIPP. All transuranic waste generated from atomic energy defense activities to be disposed of at WIPP must comply with the WIPP Land Withdrawal Act, as amended, the WIPP Hazardous Waste Facility Permit, the WIPP waste acceptance criteria, and other applicable requirements. Currently, any reprocessing waste that may be determined to be non-HLW could not be disposed of at WIPP because the WIPP permit specifically prohibits tank waste from disposal at WIPP.

Disposal capacity. DOE believes that the available commercial LLW disposal capacity will be adequate to accommodate its wastes, as well as those from the commercial sector. The Waste Control Specialists (WCS) Federal Waste Facility accepts DOE Class A, B or C LLW. Energy*Solutions* in Utah (Clive) receives commercial and DOE Class A LLW.[7] These facilities have several million cubic meters of disposal capacity, with the possibility of increased capacity if license amendments are approved, that can be used for DOE's eligible radioactive wastes. DOE will continue to evaluate LLW disposal capabilities and available capacity.

Other waste types. The scope of the HLW interpretation is reprocessing waste; it does not and would not appropriately address other waste types that are not from reprocessing of SNF, such as: The greater-than-Class C (GTCC) LLW inventory included in the *Final Environmental Impact Statement for the Disposal of Greater-Than-Class C Low-Level Radioactive Waste and GTCC-Like Waste,* and also discussed in the recently issued *Environmental Assessment (EA) for the Disposal of Greater-Than-Class C (GTCC) Low-Level Radioactive Waste and GTCC-Like Waste at Waste Control Specialist in Andrews County, Texas;* and uranium-233 waste.

Yucca Mountain. At least one commenter opined that DOE could obviate the need for the HLW interpretation if, instead, the Department pursued the development of a deep geologic repository at Yucca Mountain for SNF and HLW. Pursuit of a deep geologic repository at Yucca Mountain and DOE's HLW interpretation are not mutually exclusive efforts, and DOE believes it is necessary and appropriate to pursue both. DOE agrees that Yucca Mountain is the only site that can legally be considered for the disposal of HLW, and the Administration has requested funding from Congress to restart the Yucca Mountain licensing proceeding. The Department's interpretation of what is not HLW does not affect the need for, or the Department's commitment to a deep geologic repository at Yucca Mountain for the disposal of HLW.

IV. Conclusion

The Department bases its interpretation of the statutory term HLW on the statutory text and purpose. DOE's interpretation is consistent with and informed by its comprehensive understanding and experience in the safe and technically sound disposal of many types of radioactive wastes, including those from its legacy reprocessing activities. On this basis, the Department interprets the AEA and NWPA as establishing that not all reprocessing wastes are HLW by law, and that where wastes can be safely disposed based on the radiological characteristics of the waste, such wastes may properly be classified as non-HLW. DOE anticipates continued engagement and productive involvement of members of the public and the regulatory community in subsequent activities that may follow this HLW interpretation, including the NEPA process described in the NOI.

Signed at Washington, DC, on May 30, 2019.

Anne Marie White,

Assistant Secretary for Environmental Management.

Appendix A

This Appendix provides additional detail comparing the requirements of DOE and NRC for the disposal of LLW. While there are some differences in the two systems, both are based on technical and administrative requirements that ensure an essentially identical level of public health and safety protection.

SAFETY GOALS AND COMPARISON OF NRC AND DOE PERFORMANCE OBJECTIVES

Safety goal	NRC performance objective for commercial facilities	DOE performance objective/measures for DOE facilities
Standard for demonstrating compliance.	*reasonable assurance* exists that exposures to humans are within the limits established in the performance objectives . . . [10 CFR 61.40].	*reasonable expectation* that the performance objectives identified in this Chapter are not exceeded as a result of operation and closure of the facility. [DOE Manual 435.1–1 Ch. IV P(1)].
Protection of the General Population.	Radioactive material released to the general environment in groundwater, surface water, air, soil, plants, or animals must not result in a dose to the whole body of in excess of 25 mrem annually. [10 CFR 61.41].	Dose to a representative member of the public shall not exceed 25 mrem annually from all exposure pathways excluding the dose from radon and its progeny in air. [DOE Manual 435.1–1 Ch. IV P(1)(a)].

[7] There are two additional licensed LLW disposal facilities for commercial compact waste only (the Barnwell, South Carolina facility and the U.S. Ecology facility near Richland, Washington).

SAFETY GOALS AND COMPARISON OF NRC AND DOE PERFORMANCE OBJECTIVES—Continued

Safety goal	NRC performance objective for commercial facilities	DOE performance objective/measures for DOE facilities
	NRC adds organ-specific objectives: No dose to the thyroid in excess of 75 mrem/year and to any other organ of any member of the public in excess of 25 mrem/year. [10 CFR 61.41]. *—This cell intentionally blank—*	DOE adds air pathway objective: Dose to representative members of the public shall not exceed 10 mrem/year, excluding radon and its progeny. [DOE Manual 435.1–1 Ch. IV P(1)(b)]. DOE adds an objective specifically for radon: Radon release shall not exceed an average flux of 20 pCi/m^2/second at the surface of the disposal facility. Alternatively a limit of 0.5 pCi/liter of air may be applied at the facility boundary. [DOE Manual 435.1–1 Ch. IV P(1)(c)].
Protection of Individuals from Inadvertent Intrusion.	Design, operation, and closure of the land disposal facility must ensure protection of any individual inadvertently intruding into the disposal site and occupying the site or contacting the waste at any time after active institutional controls over the disposal site are removed. [10 CFR 61.42] While a quantitative limit is not specified, 10 CFR 61 Final EIS suggests dose limit of 500 mrem/year [NUREG–0945, NUREG–1854].	For purposes of establishing limits on concentration of radionuclides that may be disposed of near-surface, an analysis of inadvertent human intrusion shall use *performance measures* for chronic and acute exposure scenarios of 100 mrem in a year and 500 mrem total effective dose equivalent, excluding radon. [DOE Manual 435.1–1 Ch. IV P(2)(h)].
Protection of individuals during operations.	Operations at the land disposal facility must be conducted in compliance with radiation protection standards set out in 10 CFR part 20 except for releases of radioactivity in effluents from the land disposal facility, which shall be governed by 10 CFR 61.41. [10 CFR 61.43]. Worker dose shall not exceed 5 rem/year (10 CFR 20.1201) and public dose shall not exceed 100 mrem/year (10 CFR 20.1301).	Facilities, operations, and activities shall meet the requirements of 10 CFR part 835 and DOE Order 5400.5 (superseded by Order 458.1) for establishing acceptable dose rates to workers and the public. [DOE Manual 435.1–1 Ch. I 1.E(13)]. Worker dose shall not exceed 5 rem/year (10 CFR 835.202), public dose in controlled area shall not exceed 100 mrem/year (10 CFR 835.208); and public does shall not exceed 25 mrem/year (DOE Order 458.1, Section 4.h(1)).
Stability of Disposal Facility	The disposal facility must be sited, designed, used, operated, and closed to achieve long-term stability of the disposal site and to eliminate to the extent practicable the need for ongoing active maintenance of the disposal site following closure so that only surveillance, monitoring, or minor custodial care are required. [10 CFR 61.44].	Disposal Facility Closure Plans, includes a description of how the disposal facility will be closed to achieve long-term stability and minimize the need for active maintenance following closure and to ensure compliance with the requirements of DOE Order 5400.5, *Radiation Protection of the Public and the Environment.* (superseded by Order 458.1) [DOE Manual 435.1–1 Ch. IV Q(1)(b) and Ch. IV M].
Composite Analysis of Impacts of All Sources of Radioactive Material at a DOE site.	*—This cell intentionally blank—*	Dose at point of compliance from all interacting sources does not exceed 30 mrem per year. [DOE Standard 5002–2017, Section 3.2.1.].

[FR Doc. 2019–12116 Filed 6–7–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Assessment for the Commercial Disposal of Defense Waste Processing Facility Recycle Wastewater From the Savannah River Site

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an environmental assessment (EA) pursuant to the National Environmental Policy Act of 1969 (NEPA) to dispose of up to 10,000 gallons of stabilized (grouted) Defense Waste Processing Facility (DWPF) recycle wastewater from the Savannah River Site (SRS) at a commercial low-level radioactive waste (LLW) disposal facility located outside of South Carolina licensed by either the Nuclear Regulatory Commission (NRC) or an Agreement State. This effort will analyze capabilities for alternative treatment and disposal options through the use of existing, permitted, off-site commercial treatment and disposal facilities.

ADDRESSES: This **Federal Register** Notice (Notice) is available on *https://www.energy.gov/em/high-level-radioactive-waste-hlw-interpretation.* The Draft EA will also be made available at this website.

FOR FURTHER INFORMATION CONTACT: James Joyce, U.S. Department of Energy, Office of Environmental Management, Office of Waste and Materials Management (EM–4.2), 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (301) 903–2151. Email: *James.Joyce@em.doe.gov.*

SUPPLEMENTARY INFORMATION: The DWPF recycle wastewater would be treated, characterized, and if the performance objectives and waste acceptance criteria of a specific disposal facility are met, DOE could consider whether to dispose of the waste as LLW under the Department's high-level radioactive waste (HLW) interpretation published elsewhere in this issue of the **Federal Register**. As DOE explained in the Supplemental Notice, the HLW interpretation does not change or revise any current policies or other legal requirements with respect to HLW. As a result of this NEPA process, DOE may consider what actions, if any, are needed and appropriate to implement any decision to dispose of the DWPF recycle wastewater as LLW.

Background

SRS occupies approximately 300 square miles primarily in Aiken and Barnwell Counties, South Carolina. Until the early 1990s, the primary SRS mission was the production of special radioactive isotopes to support national defense programs. More recently, the SRS mission has emphasized waste management, environmental restoration, and the decontamination and decommissioning of facilities that are no longer needed for SRS's traditional defense activities.

SRS generated large quantities of liquid radioactive waste as a result of its nuclear materials production mission. This waste resulted from dissolving spent nuclear fuel and nuclear targets to recover valuable isotopes. [1] The waste was placed into underground storage tanks at SRS and consists primarily of three physical forms: sludge, salt, and liquid supernatant.

The sludge portion in the underground tanks is being transferred on-site to the DWPF for vitrification in borosilicate glass to immobilize the radioactive constituents, as described in the *Defense Waste Processing Facility Supplemental Environmental Impact Statement* (DOE/EIS–0082–S, November 25, 1994) and subsequent Record of Decision (60 FR 18589). The resulting vitrified waste form is poured as molten glass into production canisters where it cools into a solid waste-glass, and is securely stored at SRS until DOE establishes a final disposition path. Recycle wastewater is generated as part of DWPF operations. The wastewater is a combination of several dilute liquid waste streams consisting primarily of condensates from the pretreatment and vitrification processes. Other components of the recycle wastewater include process samples, sample line flushes, sump flushes, and cleaning solutions from the decontamination and filter dissolution processes. Currently, the recycle wastewater is returned to the tank farm for volume reduction by evaporation or is beneficially reused in salt dissolution and pretreatment, or sludge washing. As described in SRS Liquid Waste System Plan, Revision 21, beginning in FY 2024, SRS assumes that the practice of returning the recycle wastewater to the tank farm will be discontinued in order to support acceleration of tank closures. In lieu of the current evaporation process performed in the tank farm, the DWPF recycle wastewater is currently planned to undergo an alternative pre-treatment process prior to transfer to the SRS Effluent Treatment Project and the Saltstone Production Facility.

Purpose and Need for Action

DOE's purpose and need for this action is analyze capabilities for alternative treatment and disposal options for DWPF recycle wastewater through the use of existing, permitted, off-site commercial treatment and disposal facilities. At the time DOE prepared the 1994 and 2006 supplemental environmental impact statements for DWPF (DOE/EIS–0082–S) and Savannah River Site Salt Processing Alternatives (DOE/EIS–0082–S2), respectively, it did not analyze the potential environmental impacts associated with potential commercial treatment and disposal options for DWPF recycle wastewater. DOE now proposes to use commercial LLW disposal facilities for up to 10,000 gallons of DWPF recycle wastewater to provide treatment and disposal options for completion of the tank closure program. Any proposal to dispose of more than 10,000 gallons, would be evaluated in separate NEPA documentation. Treatment or disposal of this waste at a commercial LLW facility could help facilitate and accelerate completion of the environmental cleanup mission at SRS and would provide an alternative disposal option in the event on-site treatment and disposal capabilities become unavailable.

Proposed Action and Alternatives

Under the proposed action, DOE would dispose of up to 10,000 gallons of stabilized (grouted) DWPF recycle wastewater at SRS at a commercial LLW facility outside of South Carolina licensed by either the NRC or an Agreement State under 10 CFR part 61. The EA will analyze the potential environmental impacts of up to 10,000 gallons proposed for commercial disposal. Prior to a disposal decision, DOE would characterize the DWPF recycle wastewater to verify with the licensee of the commercial LLW disposal facility whether the waste meets DOE's HLW interpretation for disposal as non-HLW (the interpretation is published elsewhere in this issue of the **Federal Register**). DOE would also demonstrate compliance with waste acceptance criteria and all other requirements of the disposal facility, including any applicable regulatory requirements (*e.g.,* Resource Conservation and Recovery Act) for treatment of the waste prior to disposal and applicable Department of Transportation (DOT) requirements for packaging and transportation from SRS to the commercial facility. DOE has identified three action alternatives for the proposed action:

- *Alternative 1:* Deploy treatment capability at SRS to stabilize up to 10,000 gallons of DWPF recycle wastewater. Depending upon whether the final packaged waste form is classified as Class A, B, or C LLW, [2] it would then be shipped for disposal to either the Waste Control Specialists Federal Waste Facility in Andrews County, Texas (if determined to be Class A, B or C LLW) [3] and/or the Energy*Solutions* LLW disposal facility near Clive Utah (if determined to be Class A LLW), [4] depending upon waste content and facility waste acceptance criteria.
- *Alternative 2:* Transfer up to 10,000 gallons of DWPF recycle wastewater at SRS into a DOT-approved package and ship the waste to either the WCS facility and/or the Energy*Solutions* facility for treatment into a solid waste form and disposal as LLW, depending upon waste content and facility waste acceptance criteria.
- *Alternative 3:* Transfer up to 10,000 gallons of DWPF recycle wastewater into a DOT approved package and ship the waste for treatment to a commercial treatment facility with appropriate permits and licenses. Following treatment, ship the solidified DWPF recycle waste for disposal at either the WCS facility or the Energy*Solutions* facility, depending upon waste content and facility waste acceptance criteria.

[1] DOE issued a Supplemental Notice Concerning U.S. Department of Energy Interpretation of High-Level Radioactive Waste published elsewhere in this issue of the **Federal Register**, in which DOE provided its interpretation of the term high-level waste as defined in the Atomic Energy Act of 1954, as amended (AEA, 42 U.S.C. 2011 *et seq.*) and the Nuclear Waste Policy Act of 1982, as amended (NWPA, 42 U.S.C. 10101 *et seq.*). DOE interprets the statutes to provide that a reprocessing waste may be determined to be non-HLW if the waste meets either of the following two criteria: (I) does not exceed concentration limits for Class C low-level radioactive waste as set out in 10 CFR 61.55, and meets the performance objectives of a disposal facility; or (II) does not require disposal in a deep geologic repository and meets the performance objectives of a disposal facility as demonstrated through a performance assessment conducted in accordance with applicable requirements.

[2] In its 10 CFR part 61 regulations, NRC has identified classes of LLW—Class A, B, or C—for which near-surface disposal is safe for public health and the environment. This waste classification regime is based on the concentration levels of a combination of specified short-lived and long-lived radionuclides in a waste stream, with Class C LLW having the highest concentration levels.

[3] WCS is licensed by the Texas Commission on Environmental Quality for the disposal of Class A, B, and C LLW that meets specified waste acceptance criteria.

[4] Energy*Solutions* is licensed by the Utah Department of Environmental Quality for the disposal of Class A LLW that meets specified waste acceptance criteria.

The EA will also analyze a no action alternative under which the DWPF recycle wastewater would remain in the SRS liquid waste system until disposition occurs. As currently planned, beginning in FY 2024, the DWPF recycle wastewater would undergo a pre-treatment process prior to transfer to the SRS Effluent Treatment Project and the Saltstone Production Facility. The potential environmental impacts of the no action alternative are anticipated to be similar to those analyzed by the supplemental environmental impact statements for DWPF (DOE/EIS–0082–S) and Savannah River Site Salt Processing Alternatives (DOE/EIS–0082–S2), relative to the quantities of waste involved. DOE's purpose and need for this proposal is to expand its disposal options, and hence no NEPA analyses on treatment and disposal at Federal disposal facilities will be conducted.

Potential Areas of Environmental Analysis

DOE has tentatively identified the following areas for detailed analysis in the EA. The list is not intended to be comprehensive or to predetermine the potential impacts to be analyzed.

- Impacts to the general population and workers from radiological and non-radiological releases, and other public and worker health and safety impacts.
- Impacts of emissions on air and water quality, including impacts of greenhouse gas emissions.
- Impacts on ecological systems and threatened and endangered species.
- Impacts on waste management activities.
- Impacts of transportation of radioactive materials to commercial treatment and disposal facilities.
- Impacts that could occur as a result of postulated accidents and intentional destructive acts (terrorist actions and sabotage).
- Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Short-term and long-term land use impacts, including potential impacts of disposal.
- Cumulative impacts.

NEPA Process and Public Participation

DOE will issue a **Federal Register** Notice later this year on the availability of the Draft Commercial Disposal of Recycle Wastewater EA and will include instructions on how to submit public comments on the Draft EA. DOE adheres to all NEPA regulations including those related to public participation and stakeholder interactions. In general, the NEPA process requires meaningful opportunities for public participation. Key opportunities for public participation in the NEPA process include submitting comments on publicly available draft NEPA documents such as the Draft Commercial Disposal of Recycle Wastewater EA announced in this **Federal Register** Notice. Based on the EA analysis, DOE will either issue a Finding of No Significant Impact or announce its intention to prepare an environmental impact statement.

Signed at Washington, DC, on May 30, 2019.

Anne Marie White,

Assistant Secretary for Environmental Management.

[FR Doc. 2019–12114 Filed 6–7–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Intent To Prepare an Environmental Impact Statement for Plutonium Pit Production at the Savannah River Site

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE) National Nuclear Security Administration (NNSA) hereby announces its intent, consistent with the National Environmental Policy Act (NEPA), to prepare an environmental impact statement (EIS) for plutonium pit production at the Savannah River Site (SRS) in South Carolina (the SRS EIS). The 2018 Nuclear Posture Review announced that the United States will pursue initiatives to ensure the necessary capability, capacity, and responsiveness of the nuclear weapons infrastructure and the needed skill of the workforce, including providing the enduring capability and capacity to produce no fewer than 80 plutonium pits per year by 2030. To achieve the Department of Defense (DoD) requirement, NNSA is proposing to repurpose the Mixed Oxide Fuel Fabrication Facility (MFFF) at SRS to produce plutonium pits while also maximizing pit production activities at Los Alamos National Laboratory (LANL) in New Mexico. NNSA also hereby provides information regarding its overall NEPA strategy related to fulfilling national requirements for pit production. NNSA will first conduct a programmatic review to assist in decisions and second conduct site-specific reviews. NNSA anticipates that it will prepare at least three documents including: A supplement analysis (SA) to the *Final Complex Transformation Supplemental Programmatic EIS* (Complex Transformation SPEIS); a site-specific EIS for the proposal to produce pits at SRS; and site-specific documentation for the proposal to authorize expanding pit production at LANL.

DATES: NNSA invites Federal and state agencies, state and local governments, Native American tribes, industry, other organizations, and members of the public to submit comments to assist in identifying environmental issues and in determining the appropriate scope of the SRS EIS until July 25, 2019. Comments received after this date will be considered to the extent practicable. NNSA will hold one public scoping meeting for the proposed EIS as follows:

- June 27, 2019 (5:00 p.m.–9:00 p.m. EST) at the North Augusta Community Center, 495 Brookside Ave. North Augusta, SC 29841.

Doors will open at 5:00 p.m. on June 27, 2019 at the community center for the public to view posters on display. NNSA will provide a brief presentation on the EIS beginning at 6:00 p.m. and then NNSA will accept public comments on the scope of the EIS.

ADDRESSES: Written comments on the scope of the EIS, requests to be placed on the EIS distribution list, and comments or questions on the scoping process should be sent to: Ms. Jennifer Nelson, NEPA Document Manager, National Nuclear Security Administration Savannah River Field Office, P.O. Box A, Aiken, SC 29802 or email to *NEPA-SRS@srs.gov.* If you would like to pre-register to comment during the public scoping meeting, send an email to *NEPA-SRS@srs.gov.* Before including your address, phone number, email address, or other personal identifying information in your comment, please be advised that your entire comment—including your personal identifying information—may be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may also submit comments anonymously. Also, NNSA requests Federal, State, and local agencies that desire to be designated as cooperating agencies on the EIS to contact the NEPA Document Manager at the address listed in this section by the end of the scoping period.

FOR FURTHER INFORMATION CONTACT: For further information about this Notice, please contact Mr. James R. Sanderson, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0119, email to: *NEPA-SRS@srs.gov.*

This Notice will be available on the internet at: *https://www.energy.gov/nepa/listings/notices-intent-noi.*

SUPPLEMENTARY INFORMATION:

Background

National security policies require DOE, through NNSA, to maintain the United States' nuclear weapons stockpile, as well as the nation's core competencies in nuclear weapons. NNSA, a semi-autonomous agency within the DOE, has the mission to maintain and enhance the safety, security, and effectiveness of the nuclear weapons stockpile.

Plutonium pits are critical components of every nuclear weapon, with nearly all current stockpile pits having been produced from 1978–1989. Today, the United States' capability to produce plutonium pits is limited. To produce pits with enhanced safety features to meet NNSA and DoD requirements, mitigate against the risk of plutonium aging, and respond to changes in deterrent requirements driven by growing threats from peer competitors, the Department of Defense (DoD) requires NNSA to produce no fewer than 80 plutonium pits per year by 2030, and to sustain the capacity for future (Life Extension Programs and follow-on) programs.

NNSA's pit production mission was emphasized as a national security imperative by the 2018 Nuclear Posture Review, issued in February 2018 by the Office of the Secretary of Defense and subsequent Congressional statements of the policy of the United States. The 2018 Nuclear Posture Review announced that the United States will pursue initiatives to ensure the necessary capability, capacity, and responsiveness of the nuclear weapons infrastructure and the needed skill of the workforce, including providing the enduring capability and capacity to produce no fewer than 80 pits per year by 2030. The 2018 Nuclear Posture Review concludes that the United States must have sufficient research, design, development, and production capacity to support the sustainment of its nuclear forces.

To that end, DoD Under Secretary of Defense for Acquisition and Sustainment Ellen M. Lord and Under Secretary for Nuclear Security and Administrator of the NNSA Lisa Gordon-Hagerty issued a Joint Statement on May 10, 2018, identifying their recommended alternative to meet the pit production requirement based on the completion of an Analysis of Alternatives, an Engineering Assessment and a Workforce Analysis. To achieve the nation's requirement of producing no fewer than 80 pits per year by 2030, NNSA is proposing to repurpose the MFFF at SRS to produce plutonium pits while also maximizing pit production activities at LANL. This two-pronged approach—with a minimum of 50 pits per year produced at SRS and a minimum of 30 pits per year at LANL—is proposed as the best way to manage the cost, schedule, and risk of such a vital undertaking. This approach improves the resiliency, flexibility, and redundancy of our Nuclear Security Enterprise by reducing reliance on a single production site.

Purpose and Need for Agency Action

The security policies of the United States require the maintenance of a safe, secure, and reliable nuclear weapons stockpile and the maintenance of core competencies to design, manufacture, and maintain nuclear weapons. NNSA will pursue initiatives to meet national security requirements and ensure the necessary capability, capacity, and responsiveness of the nuclear weapons infrastructure and the needed skill of the workforce, including providing the enduring capability and capacity to produce no fewer than 80 plutonium pits per year by 2030. This need follows the requirements identified by the 2018 Nuclear Posture Review and Congressional statement of the policy of the United States (Pub. L. 115–232).

Alternatives Considered

NNSA proposes to prepare an EIS for the proposed action to repurpose the MFFF to produce a minimum of 50 pits per year at SRS. NNSA intends to evaluate the following alternatives in the EIS: (1) Proposed action to repurpose MFFF to produce a minimum of 50 pits per year; and (2) No Action Alternative. If any other reasonable alternatives are identified during the scoping period, NNSA will also evaluate those alternatives in the EIS. The EIS will include an analysis of potential impacts to the environment and human health from the proposed action, and an evaluation of potential impacts of the No Action Alternative.

The proposed action to repurpose the MFFF to produce a minimum of 50 pits per year would include, but not be limited to: Reconfiguration (including disassembly and removal of equipment and utility commodities) of the MFFF; installation of equipment necessary for activities associated with pit production (disassembly/metal preparation, pit assembly, machining, aqueous processing, foundry operations, material characterization and analytical chemistry operations for certification); constructing and repurposing other facilities surrounding the MFFF for support activities (*e.g.,* waste handling, training, office space, roads, storage, and parking); security and nuclear safety upgrades to support pit production; providing reliable utilities and infrastructure required for pit production; and hiring and training necessary workforce to ensure the safe, secure, reliable, and responsive capability for pit production at SRS.

Site-Specific SRS EIS Process

The scoping process is intended to involve all interested agencies (Federal, State, county, and local), public interest groups, Native American Tribes, businesses, and members of the public. Interested parties are invited to participate in the EIS process, both to refine the preliminary alternatives and environmental issues to be analyzed in depth and to eliminate from detailed study those alternatives and environmental issues that are not reasonable or pertinent. Input from the scoping meeting will assist NNSA in formulating the proposed action, refining the alternatives, and defining the scope of EIS analyses.

Following the scoping period announced in this Notice, and after consideration of comments received during scoping, NNSA will prepare a draft EIS for the production of plutonium pits at SRS. NNSA will announce the availability of the draft EIS in the **Federal Register** and local media outlets. Comments received on the draft EIS will be considered and addressed in the Final EIS. NNSA will issue a record of decision (ROD) no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final EIS.

Relationship to Existing and Other NEPA Analyses

NNSA is responsible for management and implementation of the requirements of NEPA and the regulations and policies promulgated thereunder, including but not limited to the Council of Environmental Quality NEPA regulations (40 CFR parts1500–1508), the DOE NEPA implementing procedures (10 CFR part 1021), and NNSA Policy (NAP) 451.1.

Previously, NNSA prepared the Complex Transformation SPEIS to analyze the potential environmental

impacts associated with pit production at different site alternatives: LANL in Los Alamos, New Mexico; SRS near Aiken, South Carolina; Pantex Plant near Amarillo, Texas; Y–12 National Security Complex in Oak Ridge, Tennessee; and the Nevada National Security Site north of Las Vegas, Nevada. At SRS, the Complex Transformation SPEIS also evaluated a pit production facility that would use the MFFF and pit disassembly and conversion facility infrastructure [73 FR 63470, October 24, 2008]. Additionally, pit production at LANL has been analyzed in several NEPA documents over the past two decades. Federal decisions (RODs) have authorized pit production levels of no more than approximately 20 pits per year at LANL [64 FR 50797, September 20, 1999]. However, higher levels of pit production have been analyzed in: The Complex Transformation SPEIS, which analyzed pit production levels as high as 125 pits per year for the 5 sites listed above [73 FR 77644, December 19, 2008]; and in the 2008 LANL Sitewide Environmental Impact Statement, which analyzed up to 80 pits per year at LANL in the Expanded Operations Alternative (DOE/EIS–0380, May 2008). Prior to making any decisions on producing a minimum of 30 pits per year at LANL and a minimum of 50 pits per year at SRS, NNSA will conduct further NEPA analyses as discussed below.

NNSA anticipates that it will prepare at least three documents including: A SA to the *Final Complex Transformation Supplemental Programmatic EIS* (Complex Transformation SPEIS); the site-specific EIS for the proposal to produce pits at SRS announced in this Notice; and site-specific documentation for the proposal to authorize expanding pit production beyond 20 pits per year at LANL.

NNSA is preparing a SA to the Complex Transformation SPEIS related to the proposed action for pit production. NNSA will use the SA to determine if there are significant changes in the proposed action which are substantial and relevant to environmental concerns or whether new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts are significant. The SA would inform the site-specific documentation for the proposed pit production activities at both SRS and LANL. Although pertinent regulations do not require public comment on a SA, NNSA has decided, in its discretion, that public comment in this instance would be helpful and will issue a draft SA.

If the SA identifies no new significant circumstances or information relevant to environmental concerns that effect NNSA's decisions concerning pit production at a programmatic level, NNSA would announce the determination from the SA to the Complex Transformation SPEIS at the same time it would announce an amended ROD. If NNSA determines that a supplement to the Complex Transformation SPEIS or a new EIS is required, NNSA will announce those decisions as appropriate.

NNSA also intends to conduct site-specific NEPA analysis for expanded pit production activities at LANL to determine if there are significant changes in the proposed action which are substantial and relevant to environmental concerns or whether new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts are significant. The type of site-specific analysis for producing a minimum of 30 pits per year at LANL will include a SA to the 2008 LANL Sitewide Environmental Impact Statement.

Depending on the results of the site-specific review at LANL, NNSA may announce an amended ROD or prepare additional NEPA documentation for the proposed action.

EIS Preparation and Schedule

NNSA expects to issue the draft EIS in 2020.

Signed in Washington, DC, this 31st day of May 2019, for the United States Department of Energy.

Lisa E. Gordon-Hagerty,

Under Secretary for Nuclear Security Administration, National Nuclear Security Administration.

[FR Doc. 2019–12003 Filed 6–7–19; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9995–08–Region 8]

Public Water System Supervision Program Revision for the State of Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Public notice is hereby given that the state of Utah has revised its Public Water System Supervision (PWSS) Program by adopting federal regulations for the Revised Total Coliform Rule (RTCR) that correspond to the National Primary Drinking Water Regulations (NPDWR). The EPA has reviewed Utah's regulations and determined they are no less stringent than the federal regulations. The EPA is proposing to approve Utah's primacy revision for the RTCR.

This approval action does not extend to public water systems in Indian country. Please see **SUPPLEMENTARY INFORMATION**, Item B.

DATES: Any member of the public is invited to request a public hearing on this determination by July 10, 2019. Please see **SUPPLEMENTARY INFORMATION**, Item C, for details. Should no timely and appropriate request for a hearing be received, and the Regional Administrator (RA) does not elect to hold a hearing on his/her own motion, this determination shall become applicable July 10, 2019. If a public hearing is requested and granted, then this determination shall not become applicable until such time following the hearing as the RA issues an order affirming or rescinding this action.

ADDRESSES: Requests for a public hearing should be addressed to: Robert Clement, Drinking Water B Section, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129.

All documents relating to this determination are available for inspection at: EPA Region 8, Drinking Water Section (5th Floor), 1595 Wynkoop Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Robert Clement, Drinking Water B Section, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, phone 303–312–6653.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of section 1413 of the Safe Drinking Water Act (SDWA), 42 U.S.C. 300g–2, and 40 CFR 142.13, public notice is hereby given that the state of Utah has revised its PWSS program by adopting federal regulations for the RTCR that correspond to the NPDWR in 40 CFR parts 141 and 142. The EPA has reviewed Utah's regulations and determined they are no less stringent than the federal regulations. The EPA is proposing to approve Utah's primacy revision for the RTCR.

This approval action does not extend to public water systems in Indian country as defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION**, Item B.

A. Why are revisions to state programs necessary?

States with primary PWSS enforcement authority must comply with the requirements of 40 CFR part 142 to maintain primacy. They must adopt regulations that are at least as

stringent as the NPDWRs at 40 CFR parts 141 and 142, as well as adopt all new and revised NPDWRs in order to retain primacy (40 CFR 142.12(a)).

B. How does this action affect Indian country (18 U.S.C. 1151) in Utah?

The EPA's approval of Utah's revised PWSS program does not extend to Indian country as defined in 18 U.S.C. 1151. Indian country in Utah generally includes (1) lands within the exterior boundaries of the following Indian reservations located within Utah, in part or in full: The Goshute Reservation, the Navajo Indian Reservation, the reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, the Uintah and Ouray Reservation (subject to federal court decisions removing certain lands from Indian country status within the Uintah and Ouray Reservations), and the Washakie Reservation; (2) any land held in trust by the United States for an Indian tribe; and (3) any other areas which are ''Indian country'' within the meaning of 18 U.S.C. 1151. The EPA or eligible Indian tribes, as appropriate, will retain PWSS program responsibilities over public water systems in Indian country.

C. Requesting a Hearing

Any member of the public may request a hearing on this determination within thirty (30) days of this notice. All requests shall include the following information: Name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of interest and information to be submitted at the hearing; and a signature of the interested individual or responsible official, if made on behalf of an organization or other entity. Frivolous or insubstantial requests for a hearing may be denied by the RA.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing and will be made by the RA in the **Federal Register** and in a newspaper of general circulation in the state. A notice will also be sent to both the person(s) requesting the hearing and the state. The hearing notice will include a statement of purpose of the hearing, information regarding time and location for the hearing, and the address and telephone number where interested persons may obtain further information. The RA will issue an order affirming or rescinding the determination upon review of the hearing record.

Please bring this notice to the attention of any persons known by you to have an interest in this determination.

Dated: May 28, 2019.

Gregory Sopkin,

Regional Administrator, Region 8.

[FR Doc. 2019–12182 Filed 6–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2017–0427; FRL–9994–29–OAR]

RIN 2060–AT73

National Emission Standards for Hazardous Air Pollutants for Asbestos: Notice of Final Approval for an Alternative Work Practice Standard for Asbestos Cement Pipe Replacement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: This document announces our approval of an alternative work practice (AWP) under the Clean Air Act (CAA) in response to a request to use new technology and work practices developed for removal and replacement of asbestos cement (A/C) pipe, which is regulated under the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Asbestos. This approval specifies the operating conditions, notifications, work practices, disposal, recordkeeping and reporting requirements that must be followed to demonstrate compliance with the NESHAP for Asbestos and the approved AWP.

DATES: The AWP request for the use of close tolerance pipe slurrification (CTPS) for replacement of A/C pipes is approved as of June 10, 2019.

ADDRESSES: The U.S. Environmental Protection Agency (EPA) has established a docket for this document under Docket ID No. EPA–HQ–OAR–2017–0427. All documents in the docket are listed on the *https://www.regulations.gov/* website. Although listed, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov/,* or in hard copy at the EPA Docket Center, 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., Eastern Standard Time, 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.

FOR FURTHER INFORMATION CONTACT: For questions about this final action, contact Mr. Korbin Smith, Sector Policies and Programs Division (D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2416; fax number: (919) 541–4991; and email address: *smith.korbin@epa.gov.*

For questions about the applicability of this action, contact Mr. John Cox, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, WJC South Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–1395; and email address: *cox.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

A/C asbestos cement
ACM asbestos-containing material
ACPRP asbestos cement pipe replacement project
ACWM asbestos-containing waste material
AD applicability determination
ASTM American Society for Testing and Materials
ASU Arizona State University
AWP alternative work practice
CAA Clean Air Act
CFR Code of Federal Regulations
CIPP cured-in-place pipe
CTPS close tolerance pipe slurrification
EPA Environmental Protection Agency
HDD horizontal directional drill
HEPA high efficiency particulate air
NESHAP national emission standards for hazardous air pollutants
OSHA Occupational Safety and Health Administration
RACM regulated asbestos-containing material, as defined in 40 CFR 61.141
VE visible emissions, as defined in 40 CFR 61.141

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

I. Background
A. Summary
B. How do I obtain a copy of this document and other related information?
C. What is the Asbestos NESHAP and how does it regulate removal of A/C pipe?

D. For A/C pipe replacement, what conventional work practices comport with the Asbestos NESHAP?
E. How is an AWP approved?
F. Upon what alternative did the EPA solicit comments?
II. What comments were received on the AWP, and what are the EPA's responses to them?
A. Comments Regarding Whether the EPA has Met Its Regulatory Requirements for Alternative Approval and Equivalency Determination
B. Comments Regarding the Supervisor Requirements for the CTPS AWP
C. Comments Regarding the Technical Procedure
D. Comments Regarding the Comparison Between CTPS and Other Pipe Replacement Procedures
E. Comments Regarding Inspection Requirements
F. Comments Regarding Training and Certification
G. Comments Regarding Notifications, Recordkeeping, and Reporting Requirements
H. Comments Regarding Use of CTPS in Various Soil Types
I. Comments Regarding Slurry, Its Management, and Disposal
J. Comments Regarding Future Status of the New Pipe and Skim Coat
K. Other Comments
III. What are the EPA's decisions on suggested changes to the AWP?
A. Changes to the Notification, Reporting, and Recordkeeping Requirements
B. Clarifications to the Process Description
C. Conducting a Thorough Inspection of A/C Pipe
D. Changes to the Sampling and Analysis Requirements
E. Decontamination Procedures
F. Clarification to Disposal Requirements
IV. What is the approved AWP for replacement of A/C pipe?
A. What are the results of the EPA's review of the CTPS AWP?
B. What inspection, operation, and maintenance requirements would apply?
C. What notification, recordkeeping, and reporting requirements would apply?
D. The CTPS Technique for A/C Pipe Replacement
E. Sampling, Testing, and Utility Map Notation Requirements
F. Trackable Pipeline Requirements
G. Slurry Removal, Containment, Labeling, and Transportation Requirements
H. Disposal Requirements
I. Equipment Decontamination or Disposal
J. Application of Asbestos NESHAP Requirements

I. Background

A. Summary

In a **Federal Register** document dated April 25, 2018 (83 FR 18042), the EPA provided public notice and solicited comment on a request under the CAA's Asbestos NESHAP for the use of an AWP used for replacement of A/C pipes. As explained in the notice, A/C pipes throughout the U.S. are aging and weakening, causing ruptures that waste fresh water; infiltrate and overburden publicly operated treatment works (POTWs); and pollute ground water when wastewater leaks into subsurface soils, streams, lakes, rivers, and oceans.

Because A/C pipes may be located beneath and beside major roadways and structures, and may overlap or lie beneath other utilities (*e.g.,* gas, electricity, cable), their replacement can potentially be problematic, especially in high density residential, industrial, and urban areas. These A/C pipes are potentially subject to regulation under the Asbestos NESHAP when they are replaced.

Categories and entities potentially affected by this action include those listed in Table 1 of this document.

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

NESHAP and source category	NAICS [1] code
Water treatment plants	221310
Distribution line, sewer and water, construction, rehabilitation, and repair	237110
Sewer main, pipe and connection, construction, rehabilitation, and repair	237110
Storm sewer construction, rehabilitation, and repair	237110
Irrigation systems construction, rehabilitation, and repair	237110
Water main and line construction, rehabilitation, and repair	237110
Pipeline rehabilitation contractors	237120
Horizontal drilling (*e.g.,* underground cable, pipeline, sewer installation)	237990
Pipe fitting contractors	238220
Power, communication and pipeline right-of-way clearance (except maintenance)	238910
Pipeline transportation (except crude oil, natural gas, refined petroleum products)	486990
Pipeline terminal facilities, independently operated	488999
Pipeline inspection (*i.e.,* visual) services	541990
Asbestos removal contractors	562910
Asbestos abatement services	562910

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially affected by this final action. To determine whether your asbestos cement (A/C) pipe replacement project (ACPRP) would be affected by this final action, you should examine the applicability criteria in the Asbestos NESHAP (40 CFR part 61, subpart M). If you have any questions regarding the applicability of any aspect of this final action, please contact the appropriate person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section of this document.

B. How do I obtain a copy of this document and other related information?

The docket number for this final action regarding the Asbestos NESHAP is Docket ID No. EPA–HQ–OAR–2017–0427. In addition to being available in the docket, an electronic copy of this document will also be available on the internet. The EPA will post a copy of this final action at *https://www.epa.gov/stationary-sources-air-pollution/asbestos-national-emission-standards-hazardous-air-pollutants* following official Agency signature. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version and key technical documents on this same website.

C. What is the Asbestos NESHAP and how does it regulate removal of A/C pipe?

The Asbestos NESHAP is a set of work practice standards prescribed for the handling, processing, and disposal of asbestos-containing materials (ACM), and designed to minimize the release of asbestos into the atmosphere. Asbestos is a known human carcinogen and the primary route of exposure is through

inhalation of asbestos fibers. The EPA's intention in the Asbestos NESHAP was to distinguish between materials that would readily release asbestos fibers when damaged or disturbed and those materials that were unlikely to result in the release of significant amounts of asbestos fibers. If dry ACM can be crumbled, pulverized, or crushed to powder by hand pressure, it is considered friable. The potential for exposure to asbestos fibers is directly linked to the ACM potential to become friable, and then airborne. More information on the health effects of asbestos may be found at *https://www.epa.gov/asbestos/learn-about-asbestos#effects.* For more information on the Asbestos NESHAP and how it applies to A/C pipe, please see the 1990 Asbestos NESHAP amendments (55 FR 48406, November 20, 1990) and the document published on April 25, 2018 (83 FR 18042).

D. For A/C pipe replacement, what conventional work practices comport with the Asbestos NESHAP?

Asbestos Cement pipes are conventionally remediated in one of three ways: Cured-in place pipe (CIPP) lining, abandoned in place, and open trenching. The CIPP lining is used only on pipes that are still in good condition, and strong enough to withstand the daily pressures of their intended use. The CIPP lining is sprayed on the interior of unbroken, inline pipes, and is used to extend the useful life of the pipe. More information on various CIPP linings, formulation, and application is available in the docket to this document. Asbestos cement pipes may also be abandoned in place, with the new pipeline laid in a separate area. The EPA issued an applicability determination (AD) on A/C pipes that are abandoned in place, which is available in the docket for this document.

Open trenching is the practice under which the entire A/C pipe is excavated and open to the ambient air. After excavation, the A/C pipe is wet-cut into 6- and 8-foot sections using a snap cutter or similar tool, wrapped for containment, and removed for disposal. For more information on snap cutters and similar tools, see ''Asbestos Pipe Safety Awareness and Compliance'' and ''Updated Procedures for Cutting and Handling Asbestos Cement Pipe Client Revision City of Richmond Nov 2008,'' available in the docket for this action. Guidance documents on open trenching work practices that comply with the Asbestos NESHAP have been developed by state and municipal agencies and are included in the docket for this document for reference. The AWP was compared to open trenching because open trenching was the only conventional work practice that involves the replacement of A/C pipe.

E. How is an AWP approved?

As explained at proposal, the 40 CFR part 61 General Provisions include what the EPA must determine in order to approve an alternative means of emission limitation. At 40 CFR 61.12(d)(1) and (2), the General Provisions require that the alternative must achieve a reduction in emissions at least equivalent to the reduction achieved by the work practices required under the existing standard, and that the **Federal Register** document permitting the use of the alternative be published only after notice and an opportunity for a hearing.

Additionally, the Asbestos NESHAP itself contains specific provisions under which the EPA should review applications for prior written approval of an alternative emission control and waste treatment method. 40 CFR 61.150(a)(4) authorizes ''[u]se [of] an alternative emission control and waste treatment method that has received prior approval by the Administrator according to the procedure described in 40 CFR 61.149(c)(2).'' Before approval may be granted for an AWP under 40 CFR 61.150(a)(4), 40 CFR 61.149(c)(2) explains that a written application must be submitted to the Administrator demonstrating that the following criteria are met: (1) The alternative method will control asbestos emissions equivalent to currently required methods; (2) the suitability of the alternative method for the intended application; (3) the alternative method will not violate other regulations; and (4) the alternative method will not result in increased water pollution, land pollution, or occupational hazards.

F. Upon what alternative did the EPA solicit comments?

As stated in the proposal document at section V. Request for Comments, the EPA solicited comments on all aspects of this request for approval of CTPS as an AWP for the work practice standards specified in 40 CFR part 61, subpart M, the Asbestos NESHAP.

II. What comments were received on the AWP, and what are the EPA's responses to them?

The EPA received several comments that resulted in changes to the AWP from proposal. We are responding to some of the most significant comments in this document, including those comments that resulted in changes to the AWP. Comments not appearing in this document are included in the Responses to Comments Document available in the docket (Docket ID No. EPA–HQ–OAR–2017–0427).

A. Comments Regarding Whether the EPA Has Met Its Regulatory Requirements for Alternative Approval and Equivalency Determination

Comment: Several commenters stated that the CTPS AWP is a safer and more efficient way to remove and replace A/C pipe, that it was likely to be better than open cut, more economical, and safer for the environment. One commenter added that he and his family have been in the underground pipe replacement business since the mid-1930's and that the CTPS AWP is the safest and most cost-effective way to replace A/C pipes. The commenter further offered his advisory services to the EPA in furtherance of the CTPS AWP. A commenter stated that the CTPS AWP is a less disruptive way to replace and upgrade water and sewer pipes than open trench replacement, and that both the environmental and social impacts of pipe replacement are reduced by the CTPS AWP. The commenter expressed a preference for a trenchless method of pipe replacement in their neighborhood.

Response: The EPA agrees that CTPS, at least in certain scenarios, presents a lower potential asbestos exposure than open trenching. Both methods meet the Asbestos NESHAP objective to minimize emissions of asbestos to the air when asbestos is disturbed. The asbestos materials for both methods are maintained in an adequately wet state during removal, transportation, and disposal. We agree with the commenter that the key to protecting the public health, and minimizing releases of asbestos to the atmosphere, is adherence to the work practices. We discussed in 83 FR 18047–48 of the April 25, 2018, document many of the attributes of CTPS, and we agree with the commenter that the CTPS procedure is also less disruptive to the public in general. We also note, as we discuss elsewhere in this document, that any applicable Occupational Safety and Health Administration (OSHA) personal protective equipment requirements (including for employees covered by 40 CFR part 763, subpart G) remain in effect and are not impacted in any way by our approval of this AWP.

Comment: The EPA received several comments questioning whether we met the regulatory requirements under both the General Provisions as well as the Asbestos NESHAP for the review and approval of AWPs under 40 CFR part 61

standards. Some commenters stated that the EPA should not approve the requested alternative because, in the commenters' opinion, the alternative did not meet these comparative objectives. One commenter was concerned that the CTPS AWP would not meet the Asbestos NESHAP requirements for the fourth objective (no increased land pollution) because the slurry may leak into the surrounding soils while, by comparison, chunks of A/C pipe can be easily picked up from the soil if broken or damaged during removal. Another commenter stated that, depending on the soil type surrounding the A/C pipe being replaced, the CTPS AWP could increase the amount of asbestos-containing waste material (ACWM) to be disposed.

Response: The Asbestos NESHAP authorizes ''[u]se [of] an alternative emission control and waste treatment method that has received prior approval by the Administrator.'' In addressing the four approval criteria listed above, we evaluated (1) if the alternative method will control asbestos emissions equivalent to currently required methods; (2) if the alternative method is suitable for the intended application; (3) if the alternative method will not violate other regulations; and (4) if the alternative method will not result in increased water pollution, land pollution, or occupational hazards.

The Asbestos NESHAP does not prescribe a method for pipe replacement, but requires that the work practices used to remove, contain, and dispose of ACM release no visible emissions (VE) to the outside air (or control emissions). We evaluated the alternative and found that it meets all requirements for no VE, adequate wetting, waste handling, and disposal under the Asbestos NESHAP. Therefore, it satisfies the first criteria, that it controls asbestos emissions equivalently to the work practices of the standard.

Second, the CTPS AWP is specifically designed for the intended application. The primary consideration of the Asbestos NESHAP is to minimize emissions of asbestos to the air, which is accomplished by both open trench methods and by the CTPS AWP.

Third, the CTPS AWP does not violate other regulations, and does not supplant any other requirements pertaining to the removal, containment, transportation, or disposal of ACWM. We note specifically that any applicable OSHA requirements (including for employees covered by 40 CFR part 763, subpart G), which protect workers, remain in full effect.

Fourth, we believe use of the CTPS AWP will not result in increased water pollution, land pollution, or occupational hazards compared with open-trench and replacement, which is not required by the Asbestos NESHAP, but has been accepted as a NESHAP-compliant method for A/C pipe replacement. We compared the CTPS AWP to open-trench replacement because it is the traditional procedure for A/C pipe replacement. The CTPS AWP only exposes A/C pipe sections that must be removed before replacement using the underground trenchless method. The bentonite clay provides a seal on the inner surface area of the annular space (tunnel) created by the CTPS equipment train and the surrounding soils, thereby trapping the slurry between the pipe perimeter and the soil, while preventing ground water intrusion into this closed space. The slurry is 'squeegeed out' of the close tolerance space between the cavity and the new pipe and is removed at the vertical access points. This results in lowering the exposure potential to workers and the general public, not an increase in the potential exposure. This sealed surface area prevents slurry from contaminating the surrounding soils, and the ACM (which is made nonfriable by the curing process of the cementitious slurry) is not free to migrate to the surface as a result of soil movement, such as frost heaves. See the April 25, 2018, document for more information on frost heaves, and see the document titled, ''Bentonite Clay: Properties and Uses,'' in the docket to this action.

We are including in the docket a study conducted by Arizona State University (ASU) on the use of the horizontal direction drill (HDD) technique to lay underground pipe. While this was not a 'close tolerance' study, it does show that the bentonite clay effectively seals the annular space between the new pipe and the surrounding soil (evaluated in both sandy and clay soils), supports the soils above the vacant space, and prevents migration of soils into the space surrounding the new pipe. See ''Evaluation of the Annular Space Region in Horizontal Directional Drilling Installations.'' Samuel T. Ariaratnam, Ph.D., P.Eng., ASU, 2001. The 2001 ASU study also presents in Section 2.1 an ''Introduction to Drilling Fluids and Additives,'' which explains the properties of bentonite clay and use of both bentonite and drilling fluids in the HDD industry.

Both open trench replacement and the CTPS AWP use water to adequately wet the A/C. Additionally, the CTPS AWP uses drilling fluids and bentonite clay in suspension underground while the equipment train distributes these fluids within the close-tolerance tunnel. As explained in 83 FR 18045, the purpose of the Asbestos NESHAP is to prevent excessive emissions of asbestos to the ambient air. Because the CTPS AWP conducts most of the pipe removal underground, sealing the cylindrical cavity before and during replacement with bentonite clay, the AWP prevents the migration of asbestos into the surrounding soils, and the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) that remains is both fixed and nonfriable on the new pipe. Additionally, water pollution is reduced when A/C wastewater and storm water pipes in poor condition are replaced, resulting in a reduction in water pollution; and fresh water is conserved when leaking A/C pipes are remediated. For further information on the CTPS process, see the document in the Docket to this rule, titled ''Guidelines for Replacing Asbestos Cement Pipe by Close Tolerance Pipe Slurrification (CTPS),'' Portland Utilities Construction Corporation, November 2018. While we considered this document during the development of the CTPS AWP, it predates the approval of the AWP. Any owner/operator performing the CTPS AWP must follow the guidelines stated in IV.D of this document.

We believe the use of the CTPS AWP will not result in increased water pollution, land pollution, or occupational hazards compared with open-trench and replacement, which is not required by the Asbestos NESHAP, but has been accepted as a NESHAP-compliant method for A/C pipe replacement. While open trenching exposes the entire length of A/C pipe to the workers and the atmosphere during removal operations, the CTPS AWP exposes A/C pipe only at the trenches at the beginning and end of the project, and at vertical access points. These areas are at the beginning of the ACPRP, the end of the ACPRP, and at a few points in between as determined by the pipe depth, soil type (used to estimate the drag on the line), knuckles, joints, dropped sections of pipe, or broken sections of pipe. Workers are not exposed to the slurry as it is underground during pipe replacement and in containment at both the vertical access points and the vacuum truck. The slurry is contained during transportation, and is disposed of in sealed leak-tight containers. However, if workers' clothing or other materials became contaminated with slurry, it would need to be treated as ACWM and disposed of accordingly (see the definition of ACWM at 40 CFR 61.141).

For this reason, we recommend workers wear disposable coveralls that can be disposed of as ACWM at the end of the ACPRP. We also are clarifying that any applicable OSHA requirements (including for employees covered by 40 CFR part 763, subpart G), which protect workers, remain in full effect. We find that the CTPS AWP will not result in increased occupational hazards compared with open trenching methods.

When replacing an A/C pipe with a new pipe of the same size (size-on-size), the A/C pipe slurry mixture is not significantly impacted by the outer soil composition, and that soil type does not play a significant role in the amount of ACWM to be disposed of when using the CTPS AWP.

The term 'close tolerance' is used to denote that the soil displacement is at a minimum for an HDD technology. The volume of waste generated using the CTPS AWP is less than that generated using open trenching because pipe disposal using open trenching landfills the A/C pipe in its unaltered form, so most of the space is taken up by the interior open space of the pipe. In comparison, CTPS AWP waste has no open, empty spaces, and all ACM waste is compactly disposed in containment.

However, when simultaneously replacing the A/C pipe with a new pipe that has a larger diameter (upsizing), the additional soil from the perimeter of the old pipe is removed with the slurry while pulling the new pipe behind the equipment train. For example, replacing an 8-inch old pipe with a 12-inch new pipe would potentially include the soil within a 2-inch margin of the old pipe. However, this is a matter of pipe size, not soil type; that is, it is dependent upon the size of new pipe in relation to the size of the old pipe being replaced.

The soil displacement would be similar when replacing an A/C pipe with a larger pipe using open trenching and, depending on the condition of the A/C pipe, could result in a similar amount of ACWM to be disposed. For instance, conducting open trenching on an A/C pipe in poor condition could easily result in the contamination of all the surrounding soil. In that case, the soil surrounding the pipe would have to be disposed as ACWM (see 40 CFR 61.150). In such a case, the asbestos contaminating the soils would be in a friable state, rather than in a nonfriable state as it is with the CTPS procedure. We, therefore, think the two methods are generally equivalent in this regard.

We, therefore, believe the CTPS AWP does not result in an increase in water pollution, land pollution, or occupational hazards, and that it is at least equivalent to open trench replacement procedures for A/C pipe replacement.

Comment: A commenter stated that the EPA improperly allowed comparison of the CTPS AWP as demonstrated on a clay pipe, rather than on an A/C pipe, which would have more accurately demonstrated the effectiveness of the alternative. The commenter noted that the slurry from clay pipe does not necessarily re-harden into a non-friable material.

Response: The submitted evidence of the CTPS AWP shows that A/C pipe behaves similarly to the way clay pipe behaves (*i.e.,* is ground to a fine powder and suspends in slurry with drilling fluids and bentonite clay) under the CTPS process. The demonstration on clay pipe in Greenville, South Carolina, was used to demonstrate the CTPS procedure to the EPA. The slurry sample that was collected, tested, and shown to withstand compressive strength tests at 72 and 75 pounds per square inch by an independent testing laboratory, was from A/C slurry collected from the CTPS AWP as used at an ACPRP in Tennessee.

Comment: A commenter asked if the emission reduction of friable asbestos under the CTPS AWP would be similar or more substantial than that obtained by the work practices for the removal and disposal practices currently required by the rule.

Response: We believe the potential for reducing exposure to asbestos using the CTPS AWP is similar or at least equivalent to the requirements of the existing rule. We discussed the environmental benefits of the CTPS AWP in 83 FR 18048. Further, we note that open trenching is not a work practice that is required by the Asbestos NESHAP, but we compared the CTPS process to open trenching because the work practices for open trenching comply with the Asbestos NESHAP requirements, and because open trenching is a replacement process, as opposed to re-lining or abandoning the A/C pipe in place.

Comment: We received two comments on the potential for cross-contamination from the slurry. One commenter surmised that worker exposure and potential for carry-home exposure from workers to family members would be greater, as compared to open trench removal methods. This commenter stated, ''Anyone who works with slurry understands that this process is inherently messy. Slurry finds holes in its containment vessels, it splashes onto workers when being handled, and gets onto surrounding grounds and equipment even when there are no leaks in the containment process. Slurry dries on the clothes of workers, on the ground and on the equipment used to manipulate it—all of which needs to be thoroughly cleaned before the project is shut down at the end of each shift.'' Another commenter added, ''When an item contacts the asbestos-containing slurry, it becomes a potential sources of future asbestos fiber release if and when the slurry hardens,'' adding that later decontamination measures increase the potential for exposure to asbestos. This commenter added that aggressive removal techniques such as hammering, abrading, and sawing are often used to remove ACM from surfaces, and that these methods also increase the potential for future exposure when conducted in uncontrolled conditions.

Response: As with any activity involving asbestos, precautions must be taken to prevent contamination of workers and equipment. With the exception of the trenches at the beginning and end of the project, and at vertical access points, the slurry is not accessible to workers, because it is an underground replacement process. The slurry is not in contact with workers under normal operating conditions, and all asbestos is maintained in an adequately wet slurry at all points where the slurry contacts the outside air. However, if workers' clothing or other materials became contaminated with slurry, it would need to be treated as ACWM and disposed of accordingly (see the definition of ACWM at 40 CFR 61.141). For this reason, we recommend workers wear disposable coveralls that can be disposed of as ACWM at the end of the ACPRP.

Persons conducting ACPRPs using the CTPS AWP may choose to either decontaminate the equipment so that no ACM remains within or on the equipment after each ACPRP, or may use disposable linings/containers that prevent slurry from coming into direct contact with machinery, that are disposed of as ACWM. We recommend that excess wash water be properly disposed of in containment, or filtered before being allowed to be discharged as wastewater and that the filtrate be placed in containment and disposed of with other ACWM at the disposal facility. All work practices must be consistent with those required by the Asbestos NESHAP. For additional information on decontamination see section III.E below.

We note specifically that any applicable OSHA requirements (including for employees covered by 40 CFR part 763, subpart G), which protect workers, remain in full effect.

Any decontamination effort must comply with the Asbestos NESHAP

work practices, as, for example, any regulated asbestos-containing material (RACM) and ACWM must be kept adequately wet (see 40 CFR 61.145(c)(6) and 40 CFR 61.150(a)(1)). Furthermore, any owner/operator of a subsequent renovation operation that disturbs this asbestos-containing skim coat (the portion of waste slurry that remains on the exterior of the new pipe) above the regulatory threshold would need to comply with the Asbestos NESHAP. Therefore, we disagree with the commenter that the potential for asbestos exposure is greater using CTPS than for open trenching.

B. Comments Regarding the Supervisor Requirements for the CTPS AWP

Comment: The EPA received a comment asking if a trained asbestos supervisor is still required to be onsite during the entire CTPS ACPRP.

Response: The onsite supervisor requirements of the NESHAP are not changed in any way under the action to approve the CTPS AWP. See 40 CFR 61.145(c)(8). Therefore, a trained asbestos supervisor must still be onsite during the entire time A/C pipe is being replaced.

C. Comments Regarding the Technical Procedure

The EPA received a number of comments questioning the effectiveness of CTPS to abate A/C pipe. Some of these commenters made suggestions to improve the work practice.

Comment: One commenter suggested that, for excavation of vertical access points, the EPA expand on these requirements. Specifically, the commenter suggested we change the requirement, ''the owner/operator must not disturb A/C pipe during the digging out of these access points. Water and suction should be used to uncover as much of the A/C pipe as is needed to begin the CTPS process.'' The commenter suggested the following language: ''The owner/operator should avoid to the extent feasible, crumbling, pulverizing, or reducing to powder A/C pipe during the excavation of vertical access points. Water and suction, hand digging with shovels, or similar methodologies that do not crumble, pulverize, or reduce to powder A/C pipe should be used to uncover the A/C pipe as is needed to perform the CTPS process.''

Response: We accept the commenter's suggested edits with one minor edit in which we change the first sentence to read ''The owner/operator must avoid to the extent feasible, crumbling, pulverizing, or reducing to powder A/C pipe during the excavation of vertical access points.'' We agree that the added specificity better describes how to achieve our intended requirement that A/C pipe not be disturbed during the digging out of these access points, and is consistent with current work practices, which use backhoes to excavate around the trench, but hand shovels, small tools, brooms, and water to expose the A/C pipe at vertical access points. We further note that the language 'as is needed' clarifies that digging of the entire trench using hand shovels is not needed, but is used to expose the A/C pipe for removal.

Comment: A commenter surmised that the cost of disposal of the slurry would be greater than the cost of disposal of intact A/C pipes because the A/C pipe slurry would present an increase in ACWM volume and waste, and that, by extension, landfill issues, including capacity at existing landfills and disposal costs would be higher than for A/C pipe. This commenter believes the slurry would take up more space in the landfill than whole pipe because the landfill crushes the A/C pipe after it is received, thereby reducing its volume.

Response: Cost and increased waste volume are not among the equivalency determination factors that must be weighed by the EPA to determine equivalency with the standard. Increased waste volume is not land pollution because the waste is managed to prevent exposure, which is not the case with land pollution. Because this is an alternative work practice and not a mandated requirement, the relative costs are not at issue.

Comment: Two commenters asked questions regarding the applicability of the AWP to the circumstances of the ACPRP, such as preparation of the site and the size of pipe that CTPS may be used to replace.

Response: The standard industry practice is to mark existing utilities at the surface using flag markers on yards and soil, and ink on pavement and other impervious surfaces. The size pipe that may be replaced depends upon the size of the equipment train that may be used. At this time, the equipment train is available to install pipes up to 24 inches in diameter. Therefore, at this time, CTPS may be used to replace pipes up to 24 inches in diameter. It is possible that in the future, larger pipe sizes may be able to be replaced using CTPS if equipment trains of sufficient size become available. Large pipe replacement can be completed with CTPS by using a larger HDD rig with the correct drill stem rotation speed.

Comment: A commenter suggested that the EPA specify the criteria or specific technique that must be used to ensure that no ACM contacts the inside of the new pipe.

Response: All new pipes are pressure rated and have a seal system that will not allow outside material to come in. All pipe pulling caps are sealed the same way to prevent slurry material from entering the pipe. All drilling fluid pressure is relieved through the slurry relief holes to prevent drilling fluid pressure build up. While this is standard industry practice, and the trenchless industry has used sealed pipe for many years, nevertheless, we are adding these criteria to the description of the AWP to improve the work practice.

Comment: Two commenters addressed the issue that a common decontamination technique is to use excess water to wash ACM from all equipment, and that this water would have to be collected and disposed of as ACWM along with any other contaminated materials. A third commenter added that, based on his experience with developing decontamination procedures, decontamination of the vacuum truck would be extremely complicated if asbestos was a contaminant in the debris/sludge. A fourth commenter recommended that the AWP address handling of the slurry residue that may remain in or on the vacuum truck, truck cleaning, and disposal of any wash water.

Response: Persons conducting ACPRPs using the CTPS AWP may choose to either decontaminate the equipment so that no ACM remains within or on the equipment after each ACPRP, or may use disposable linings/containers that prevent the slurry from coming into direct contact with machinery, that are then disposed of as ACWM. We recommend that excess wash water be contained and filtered before being allowed to be discharged as wastewater and that the filtrate be placed in containment and disposed of with other ACWM at the disposal facility. All work practices must be consistent with those required by the Asbestos NESHAP. For additional information on decontamination see section III.E below.

D. Comments Regarding the Comparison Between CTPS and Other Pipe Replacement Procedures

Comment: One Commenter stated that the EPA's statement in the proposal document that no AWPs for the replacement of A/C pipes have yet been approved, leaves the impression that open trenching and pipe bursting are not approved by the EPA for asbestos emission control in the replacement of

A/C pipes, and that such conduct would be a violation of the Asbestos NESHAP. Another commenter asked if other alternative pipe replacement methods, such as pipe reaming and pipe bursting, are allowed as a result of the approval of the CTPS AWP.

Response: No approval is needed for a work practice under the Asbestos NESHAP as long as that work practice comports with the existing requirements of the rule. Where a potential work practice would depart from any part of the existing rule for a regulated activity, 40 CFR 61.12(d) explains how the EPA may approve an AWP, and such approval would be required in advance of using the potential AWP. The EPA has previously determined that when the work practices for open trenching are adhered to, this practice conforms to the work practice requirements of the rule. We have neither approved pipe bursting nor pipe reaming as AWPs to replace A/C pipe. Any ACPRP such as pipe bursting or pipe reaming that exceeds the threshold amounts of RACM would be required to follow the appropriate NESHAP provisions, including the standards for active waste disposal sites at 40 CFR 61.154 and the inactive waste disposal site standards at 40 CFR 61.151 if any RACM is left in the ground.

E. Comments Regarding Inspection Requirements

The EPA received inquiries regarding what inspection requirements would apply to ensure the work practices were completed correctly.

Comment: Two commenters asked the EPA to clarify the work practices to be used when a thorough inspection reveals that sections of the A/C pipe to be replaced have been crushed or are otherwise obstructed so that the CTPS equipment train is unable to encompass all of the A/C pipe it is replacing. The commenter supported the comment with rationale from a letter dated August 7, 2015 (available in the docket), which stated, ''As to inspections for asbestos and asbestos containing materials—EPA would expect an owner/operator to follow the steps described in Sections 1 through 5 and Section 8 in ASTM E2356–14 'Standard Practice for Comprehensive Building Asbestos Surveys.' '' The commenter explained that the EPA would not accept the Limited Asbestos Screen (*i.e.,* Practice E2308) as a substitute for the Comprehensive Building Asbestos Survey and does not consider the Limited Asbestos Screen as a thorough inspection. The Limited Asbestos Screen may be used to inform a thorough inspection, and can give an inspector an idea of what structures are most likely to contain ACM. However, its use is not a substitute for an inspection. American Society for Testing and Materials (ASTM) E2356–14, ''Standard Practice for Comprehensive Building Asbestos Surveys,'' is used for building surveys to help determine the presence of asbestos in many different types of building materials.

Response: Pipes are specific facility components, not complete buildings. In buildings, some materials are often not known to be asbestos containing until after inspection, sampling, and analysis. With ACPRPs, there are only a few different types of pipes used for water handling, and A/C pipe is readily distinguishable from the other types.

By the time the ACPRP is started, the location of the A/C pipe is known. For both safety and ease, when the A/C pipe to be replaced is a confined space, or is less than 6 feet in diameter, standard industry practice for underground pipe replacement projects is for the owner/operator to use robotic cameras and videography to determine the location of the pipe, including all sections of A/C pipe. The cameras are mounted on robotics that are controlled remotely by the owner/operator. The camera makes a video recording of the interior of the pipe, and records its location within the pipe in feet and inches (or meters and centimeters); stopping and examining all suspicious areas to record the size, depth, and character of any pipe abnormality. This video enables the owner/operator to precisely locate any areas of interest in the pipeline from an above-ground location. This video is then referred to as needed by the owner/operator while conducting the ACPRP and must be made available to the on-site supervisor and/or inspector immediately upon request.

Thus, for the pipe inspection, the positive identification of ACM is accomplished by the remote videography. This is not analogous to ASTM E2356–14, for building inspections which guides the inspector through sampling of suspect ACM building materials (where the presence and/or type of asbestos is not yet known).

A thorough inspection must be conducted as part of the planning of a successful ACPRP. A leaking pipe is not necessarily one that is crushed or otherwise structurally compromised. The EPA's intent is for the owner/operator to use open trenching to remove sections of pipe that are no longer in the area encompassed by the cylindrical volume that the CTPS train will retain in the slurry, or that will impede the normal passage of the CTPS equipment train through the pipe.

However, it is unlikely that sections of pipe are collapsed in an active pipeline that is being replaced because all pipe most likely has been repaired if there were any collapsed sections. (The gravity sewer would back up if it had collapsed and water would be bursting out of the ground from force main pipes if there was a collapse.)

Once inspection has occurred (which is completed before CTPS is used) the owner/operator knows the location, diameter, and length of A/C pipe sections to be replaced. These inspections identify areas of the pipe that may be compromised (crushed, off-center, broken) and the inspection is compared to existing utility records, the records are updated, and after pipe replacement, the records are saved electronically and/or in paper format for future maintenance activities.

In this final document, we are also clarifying the difference between an inaccessible section of pipe, and an obstructed section of pipe. An inaccessible section of pipe is one that is overlain by buildings or other installments that cannot be moved, and that prevents or significantly impedes access to the pipe and replacement using open trenching procedures. Roads and sidewalks do not necessarily create a situation where a pipe is inaccessible. An obstructed pipe is one that has section(s) that are structurally compromised to the point that they may cause or contribute to a malfunction of the HDD equipment for the CTPS AWP.

The EPA is, therefore, clarifying the above language to indicate what types of situations require removal of the pipe using other techniques before CTPS can be implemented. Obstructions that would impede or prevent the progress of the CTPS equipment train through the pipe passageway must be removed using open trenching or another method compliant with Asbestos NESHAP requirements (such as abandon in-place) before the CTPS AWP can be used. However, when obstructions occur at an inaccessible location (such as beneath a building) a different approach may be needed to complete the ACPRP (such as sealing off the old pipe and rerouting new pipes around the structure, or using HDD to lay a new pipeline beneath the structure).

Comment: Citing applicability determination index (ADI) A–150001, commenters asked how a thorough inspection is done. One of these commenters suggested the ASTM E2356–14, ''Standard Practice for Comprehensive Building Asbestos Surveys,'' should be used to

demonstrate that a thorough inspection has taken place. Another commenter stated that the alternative should consider what work practices must be done when crushed or broken pipe, possibly contaminating soil, is found onsite during an ACPRP.

Response: As explained in the April 25, 2018, document for the CTPS AWP (83 FR 18042, 18050): ''Prior to using the CTPS for an ACPRP, the owner/operator would conduct underground pipe inspections (*e.g.,* by using remote technologies like robotic cameras) and shall identify, locate, and mark onto an underground utility map of the area all identified potential areas of malfunctions, such as changes in pipe type, drops in the line, broken and off-center points, and changes in soil type.''

In a previous AD from the EPA on August 7, 2015, the EPA discussed what constitutes a thorough inspection. In that AD, the EPA stated, ''When EPA promulgated the regulations, the Agency elected not to define 'thorough inspection' at § 61.145(a) and did not provide a definition at § 61.141. The EPA did not adopt a 'one-size fits all' approach in order to accommodate the wide variety of techniques and practices that can be used to locate and identify asbestos and asbestos-containing materials used in the construction industry.''

Additionally, this AD cited an ASTM standard for thorough inspection of buildings and building components. The purpose of these inspections is to identify all ACM in a building or building components, for the purposes of demolition or renovation. The EPA does not see the inspection guidance for buildings as relevant, because its use is to identify ACM in buildings before demolition or renovation where the building materials are unknown. For the CTPS AWP, the pipe has already been identified as asbestos-containing, and the decision to consider using the CTPS AWP as a replacement technique would already be under consideration. Therefore, the inspection guidance for buildings is irrelevant.

In our observation of the demonstrated CTPS AWP in Greenville, South Carolina, the operator of the ACPRP maintained a video of the pipe inspection that was conducted in advance of the actual pipe replacement work, and referred to it periodically during the ACPRP work as that work progressed. We are requiring owners/operators who use the CTPS AWP to save a video of the pipe inspection and make it available at the ACPRP work site for reference as needed by inspectors, owners, and operators during the ACPRP work. The recorded inspection must be made available for use during the replacement work so that workers can know the exact location of any structurally compromised areas of pipe during the replacement process. The EPA is clarifying that a thorough inspection of the A/C pipe under the CTPS AWP is a visual inspection, conducted using remote robotic technology, of the entire length of pipe to be replaced, and identifies any areas of the pipe that are obstructed to the point that the CTPS equipment train cannot pass without instigating a malfunction as a result of the pipe's condition. In the event an A/C pipe has been obstructed to the point that the CTPS equipment train cannot pass through, the owner and operator must follow appropriate work practice standards in the Asbestos NESHAP such as open trench or abandon in place techniques.

F. Comments Regarding Training and Certification

The EPA received several inquiries as to the source and extent of training opportunities for using the CTPS AWP, and what inspection requirements would apply to ensure the work practices were completed correctly.

Comment: One commenter asked what training is provided to and required for owners/operators planning to use the CTPS AWP for ACPRPs.

Response: The onsite supervisor requirements of the NESHAP are not changed in any way under the action to approve the CTPS AWP; therefore, a trained asbestos supervisor must still be onsite during the entire time A/C pipe is being replaced. Appropriate training and certification should be conducted prior to the use of the CTPS AWP. Additionally, a document titled ''Close Tolerance HDD AC Pipe Replacement Process,'' is available in the docket.

G. Comments Regarding Notifications, Recordkeeping, and Reporting Requirements

Comment: One commenter asked the EPA to clarify how the notification requirements of 40 CFR 61.145 apply to the CTPS AWP. This commenter suggested that the global positioning system coordinates of the ACPRP using the CTPS AWP be included in the notification form that must be submitted for the project.

Response: For any ACPRP using the CTPS AWP, the 6-digit coordinates for the latitude/longitude coordinates must be recorded. We agree with the commenter that this information can be added at no additional burden to the notification and submitted to authorities with the rest of the information in the notification under 40 CFR 61.145(b) and noted also in the utility records.

Comment: A commenter asked if notification practices when using the CTPS AWP should be different than are currently required by the Asbestos NESHAP. The commenter stated that the docket does not include information that justified a different notification practice, that is, when more than 260 linear feet of A/C pipe is replaced. This commenter stated that while the document includes several recordkeeping requirements, it does not describe the purpose of each. The commenter stated that understanding their purpose would provide a clearer idea of what information to collect and how it should be stored. Another commenter stated that they support the application of the other Asbestos NESHAP requirements, including notification requirements.

Response: The notification practices of the Asbestos NESHAP are not changing. The standard notification for a renovation or demolition operation includes the location of the activity (40 CFR 61.145(b)(4)). Because ACPRPs are not necessarily located at a specific address (as is a building slated for demolition), the EPA has tailored this existing notification requirement for the location of the ACPRP to be identified using 6-digit latitudinal/longitudinal coordinates. The 6-digit latitude/longitude coordinates of each ACPRP conducted using CTPS AWP are included in the notification so that inspectors can locate and identify pipes that have been replaced using this technique.

In terms of recordkeeping, this final document has updated the requirements for the CTPS AWP after consideration of the comments. Under the CTPS AWP, the owner/operator is required to record waste shipment records (as already required by 40 CFR 61.150(d)), records of the standard operating procedures for the certain key equipment, and malfunction records (if applicable). The owner (typically the state or municipality) is also required to record the certificate from each sample friability test.

The requirement to record waste shipment records is consistent with the NESHAP and accounts for all ACWM. These records are used to certify that the proper steps were taken in disposal of ACWM. Records regarding the standing operating procedure are used to provide consistency through the ACPRP, as well as document equipment used to show compliance with the requirements of the AWP. Malfunction records allow the review of any malfunction events as well as how each malfunction was

addressed. Records of malfunction are important to show the scope of the malfunction and verifying that proper steps were taken to correct the malfunction. Friability test records provide evidence of the friability status of the sample. This is important because it is the determining factor for the regulatory status of the remaining skim coat (the portion of waste slurry that remains on the exterior of the new pipe).

In this final document, the EPA also removed certain recordkeeping requirements that appeared in the April 25, 2018, document. The recordkeeping requirements in section IV.F.1.a–g of the proposal document were removed in the final document: For information on the dates, ACPRP location, and amount of pipe, due to overlap with the existing notification requirements in 40 CFR 61.145(b)(4); for information on the disposal amount, disposal site, and disposal manifest, due to overlap with the existing waste shipment record required by 40 CFR 61.150(d); and for the amount of slurry generated, due to a determination that this detail would not provide significant information in assisting with this AWP. Additionally, the requirement for the ACPRP report was removed, due to a determination that the report would not provide significant information in assisting with this AWP beyond the information already available in the notification and records.

Comment: A commenter recommended that the EPA indicate how long the owner/operator of a CTPS AWP process is required to maintain the signed certificate from the friability test, and suggested it be required to be maintained for the lifespan of the newly installed pipe.

Response: In the April 25, 2018, document, we did not specify the period of time the signed certificate of pipe replacement should be kept. It is important to know the exact location of all underground structures, but because they are not immediately visible, maps are maintained by the states and municipalities responsible for their maintenance. It is our understanding that state and local agencies responsible for their maintenance already keep such records on a permanent basis. We are clarifying in this final document that the signed certificate of the friability test be kept by the owner (typically the state or municipality) for the life of the pipe. In the event that the pipe being replaced is privately owned, the owner would also be responsible to keep the signed certificate of the friability test for the life of the pipe.

Comment: A commenter recommended that the EPA add to the recordkeeping requirements that the owner/operator must make the records available to the air quality regulatory authority within a certain time period upon request. The commenter also recommends that the 2-year retention requirement for the sample of slurry be extended to 5 years.

Response: We are adding a requirement to the AWP that records discussed in IV.E of this document, be made available to the regulatory authority within 15 days of request. Additionally, we disagree that the slurry sample should be kept for 5 years; we believe 2 years is an appropriate time period and corresponds to the existing recordkeeping period at 40 CFR 61.150(d).

H. Comments Regarding Use of CTPS in Various Soil Types

Comment: Several commenters asked the EPA to clarify how the soil type influences the setup, use, and effectiveness of CTPS AWP. One commenter asked if the EPA has characterized the loss of slurry when pipes are replaced using the CTPS AWP in different soil types such as sandy soils or saturated soils. Another commenter stated that soil issues such as pH balance and contaminants are likely to impact the ability of the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) to harden.

Response: Bentonite clay (also known as sodium bentonite) lines the annular space created by the HDD, and prevents the loss of slurry in the CTPS technique. This lining provides a barrier between soil and pipe, and, due to its expansion properties, supports the horizontal cylindrical space (or tunnel) created as the drill removes the old A/C pipe. The use of bentonite clays in suspension in the drilling fluids accomplishes two objectives: It holds the tunnel open while the equipment train proceeds through, and it prevents the migration of fluids, including A/C pipe in suspension, from migrating outside of the underground cavity. The bentonite clay lining acts as a sealant, providing a barrier between the surrounding soil and any contaminants of that soil, and the new pipe upon which the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) occurs. The composition of the drilling fluids and bentonite clay may be adjusted depending on the soil type, depth (pressure), and pipe size to account for differences in friction and suspended solids in the slurry. The composition is developed on a site-specific basis, and is formulated according to soil pH, density, depth, void space (compaction and particle size), and abrasiveness. More on the properties of bentonite clay and its uses in underground HDD are available in the docket in the document titled, ''Bentonite Clay: Properties and Uses.'' More information on the adjustment of bentonite clay in solution and the ratio of bentonite to drilling fluids is available from the 2001 ASU Study, available in the docket, and in training materials.

I. Comments Regarding Slurry, Its Management, and Disposal

The EPA received several comments asking about the characteristics of the slurry and questioning whether the work practices afford effective management of the slurry.

Comment: For the requirements in paragraph 6 of the document proposing the AWP, Slurry Characteristics, a commenter asked the EPA to clarify requirements from guidelines and noted that the requirement to release no VE appears twice in this paragraph.

Response: We are clarifying that language to read as follows: ''The owner/operator would be required to ensure that the slurry is a homogenous mixture comprised of finely ground A/C pipe, drilling fluids, bentonite clay, and other materials suspended in solution that, when cured (a period of 48–56 hours), re-hardens so that it meets the sample friability test in section IV.E.2 of this document. The slurry must meet the no VE requirements of 40 CFR 61.145 and 61.150.''

Comment: A commenter asked the EPA to describe the appearance of the slurry.

Response: The slurry looks and behaves like mixed cement during the CTPS process; it cures and hardens (or ''sets up'') in 48–56 hours from the time of collection, a slightly longer time than it takes to cure cement. More information on the appearance of the slurry can be found in the docket to this action.

Comment: One commenter asked if the slurry qualifies as a new use of asbestos per 40 CFR 763.163. Another commenter asked the EPA to clarify that under no circumstances may the owner/operator use slurry from a CTPS ACPRP as cover material at a landfill.

Response: The slurry must be disposed of in a facility authorized to receive ACWM, and it may not be reused or used, including as cover in landfills. Thus, the slurry would not qualify as a new use of asbestos in an asbestos-containing product under the regulation at 40 CFR part 763, subpart I.

Comment: One commenter asked what keeps the slurry from hardening on the way to the landfill? The commenter stated if the hardened material contains more than 1-percent asbestos, this would seem to be a violation of the Asbestos NESHAP. A second commenter stated that ACWM must be disposed of as soon as practical. A third commenter asked what is done if the slurry cannot be disposed of before it hardens, and what the disposal implications are, specifically for transportation and disposal, so that the material will not be regulated prior to disposal.

Response: The slurry hardens in 48–56 hours. Under 40 CFR 61.150(b), ACWM must be disposed of as soon as practical. Disposal of the slurry should be completed within 24 hours, so that the slurry hardens at the disposal site. If the slurry hardens in the container in which it has been collected, it cannot be removed; the collection container becomes the disposal container. This would be an undesirable outcome from the viewpoint of the owner/operator unless the collection container was intended to be disposable, but would conform with the requirements of the Asbestos NESHAP that all ACWM be contained at disposal. Standard industry practice is to dispose of the slurry at the end of each work day to prevent this outcome.

As we stated in the April 25, 2018, document for the AWP at 83 FR 18049, ''The owner/operator would be required to ensure that the slurry remains in an adequately wet state during the slurrification process and remains in containment throughout the removal, transportation, and disposal processes, meeting the requirements of 40 CFR 61.145 and 40 CFR 61.150. The slurry must be contained and in slurry form at the time of disposal in a landfill permitted to accept ACWM and meeting the requirements of 40 CFR 61.154. The slurry must be managed at the disposal site using procedures meeting the requirements of 40 CFR 61.154.''

We disagree with the comment that using the AWP would be a violation of the Asbestos NESHAP. As we stated in the AWP proposal at pages 10846–47, ''All ACWM must be kept adequately wet and sealed in leak-tight containers (40 CFR 61.150(a)(1)) or processed into a nonfriable form, such as a nonfriable pellet or other shape (40 CFR 61.150(a)(2)).'' We continued on page 18047 that, ''The EPA is proposing to consider the slurry that is formed by the CTPS AWP for A/C pipe to be nonfriable once hardened'' (as determined by hand pressure testing on a collected sample), and on page 18048, that, ''The EPA is proposing that when the CTPS work practices are adhered to as described in this document, and when the test for friability confirms that the resulting hardened slurry (skim coating) is nonfriable ACM, the resulting material can be regulated as nonfriable ACM.'' Note that the slurry must be disposed of in containment.

Thus, disposal of the ACWM from the CTPS process does not differ from the disposal requirements of the Asbestos NESHAP, including the requirement for disposal as soon as practical. Therefore, this is not a violation of the Asbestos NESHAP.

Comment: One commenter stated that the vacuum truck is likely to dry the slurry at the top surface, and assuming that the waste is friable, dust is likely to be pulled from this surface and released to the ambient air during the action of the air moving across the top of the debris. Another commenter added that the use of high efficiency particulate air (HEPA) filters, required to be used on the vacuum trucks handling CTPS AWP ACPRPs, would be beyond what is currently required for A/C pipe removal practices.

Response: The vacuum trucks are enclosed, and the slurry is not exposed to the elements at the top. We have added technical literature from the underground construction industry to the docket to provide additional information on the types of equipment used throughout the industry to conduct this work. Testing of the slurry indicates the waste is nonfriable. The slurry must be in a wet state at the time of disposal, and creating a slurry of ACWM is one way to maintain adequately wet materials, as stated in the rule at 40 CFR 61.150(a)(1)(i). The use of a HEPA filter is not required for this standard.

Additionally, the no VE requirements of the rule have not been dismissed by approval of this AWP, so if the slurry were to be friable when dry, and if, as the commenter states, the surface of the slurry were to dry as a result of the air passing over the upper surface of the slurry and cause VE, this would be a violation of the rule, and work would have to stop to correct the VE.

Comment: A commenter surmised that there will likely be no information about what types or percentage of asbestos is in the slurry or how the skim coat will be regulated.

Response: The slurry is categorized as ACM. It is noted in utility records, which are used whenever pipe maintenance is conducted. Presence of ACM is noted, as is the location of each ACPRP using the CTPS AWP. This notation serves to inform future maintenance operators that the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) is potentially regulated under the Asbestos NESHAP, depending on the amount of ACM to be disturbed. This practice places the relevant information directly into the hands of persons responsible for future utility maintenance work.

Comment: A commenter recommended deletions and clarifications to a number of inspection, operation, maintenance, sample collection, testing, transportation, and disposal requirements; the commenter also offered alternative language if these sections are not deleted.

Response: We disagree that these sections should be deleted, as they are needed to determine that equipment is maintained, pipelines are thoroughly inspected, waste is properly transported and disposed of, and that the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) is nonfriable and, therefore, nonhazardous as long as it is properly handled in future pipe maintenance work. However, we have reviewed other suggested edits and are rephrasing the requirement for ''leak-tight wrapping'' to ''leak-tight container.''

J. Comments Regarding Future Status of the New Pipe and Skim Coat

Several commenters asked the EPA to explain the status of the new pipe once it has been installed, and what requirements apply to the asbestos coating of the new pipe.

Comment: A commenter asked if the EPA can confirm that the skim coat remaining on the new pipe is nonfriable and adheres to the new pipe.

Response: Based on the descriptions of the CTPS train, and observations by EPA personnel of the process in operation, as long as the steps of this AWP are correctly followed, the remaining skim coat (the portion of waste slurry that remains on the exterior of the new pipe) will be nonfriable (not be crumbled, pulverized, or reduced to powder by hand pressure) and adhere to the new pipe. If the slurry sample tests as friable, it is a malfunction, and malfunction requirements apply.

Comment: Three commenters stated that future repairs to the new pipe would present the same worker hazards and soil contamination issues that exist with A/C pipe.

Response: New undeteriorated A/C pipe is nonfriable, but most ACPRPs are done because deterioration of the pipe has occurred. According to testing conducted on samples of A/C pipe slurry, the skim coat (the portion of waste slurry that remains on the exterior

of the new pipe) is nonfriable ACM. Therefore, the skim coat is not any worse, but in many cases, is in a better condition that the replaced A/C pipe. Thus, the pipe that has been replaced using CTPS (so that a nonfriable ACM skim coat is present) is not uniquely different from undeteriorated A/C pipe, and, therefore, can be treated using similar practices. Moreover, the forces that caused deterioration of the old A/C pipe are no longer acting upon the skim coat, so we continue to believe that the skim coat on the new pipe remains in a nonfriable state. However, because the skim coat (the portion of waste slurry that remains on the exterior of the new pipe) is ACM, it is subject to regulation under the Asbestos NESHAP and those work practice requirements must be followed whenever repairs or maintenance activities that affect a threshold quantity of the pipe's skim coat are conducted.

Comment: Because some ACM remains on the exterior of the replacement pipe in the skim coat, one commenter stated ''a majority of'' should be added to the process description, so that it reads, the CTPS AWP ''removes a majority of A/C pipe while replacing it with non-asbestos material.''

Response: We agree with the commenter that the process description should provide a more representative description of the process. We are revising the process description to read, ''the CTPS AWP removes A/C pipe that may be friable and/or in poor condition, while replacing it with non-asbestos pipe and a skim coat (the portion of waste slurry that remains on the exterior of the new pipe) of non-friable ACM.''

K. Other Comments

The EPA received other comments on the proposed CTPS AWP, and these are addressed in the document, ''Responses to Comments on 83 FR 18042 Notification of Request for Comments on the Proposed Approval of an Alternative Work Practice for Asbestos Cement Pipe Replacement,'' which is available in the docket to this document.

III. What are the EPA's decisions on suggested changes to the AWP?

The EPA is making several changes to the AWP as a result of comments received on the April 25, 2018, document, as explained below.

A. Changes to the Notification, Reporting, and Recordkeeping Requirements

The EPA is tailoring the notification requirements for the CTPS AWP based on comments received. We are requiring that the 6-digit latitudinal and longitudinal coordinates of each ACPRP conducted using the CTPS AWP be included on the notification because a street address (such as would be included for notification of renovation or demolition of a building) does not necessarily apply to an ACPRP. We believe the 6-digit latitudinal and longitudinal coordinates are analogous to a street address and can be used instead of a street address in the notification at no additional burden to the owner/operator. The latitudinal/longitudinal coordinates can be used by regulatory authorities to locate and inspect the ACPRP effectively to ensure the work practices are conducted properly, ensure the slurry is managed correctly, and verify that all transportation and disposal requirements are followed.

The EPA made changes to the recordkeeping and reporting requirements as a result of comments received on the document. In our April 25, 2018, document, the proposed AWP required owners/operators to include the 6-digit latitudinal/longitudinal coordinates of the ACPRP on the utility record notation. In addition to the utility record notation, the EPA is requiring owners/operators to include the 6-digit latitudinal/longitudinal coordinates of the ACPRP on the notification and on any report generated as a result of a malfunction. The purpose of this requirement is to ensure that environmental regulatory authorities have the correct information on the location of any ACPRP conducted using the CTPS AWP for compliance assurance purposes.

To be consistent with the current requirements of the Asbestos NESHAP and in response to comments, we have changed the proposed recordkeeping and reporting requirements, as well as removed the requirement of an ACPRP report, as discussed in section II.G of this document.

Lastly, the signed friability certificate discussed in section IV.E.2 of this document should be kept by the owner (typically the state or municipality) for the lifespan of the newly installed pipe. The purpose of this requirement is to ensure that the relevant information on ACPRPs remains at the ready access of persons responsible for the maintenance of the pipe.

B. Clarifications to the Process Description

The EPA made changes to the AWP as a result of comments received on the document. We are revising the process description to read, ''the CTPS AWP removes A/C pipe that may be friable and/or in poor condition, while replacing it with non-asbestos material and non-friable ACM.''

The EPA is also clarifying the difference between pipe that is inaccessible and pipe that is obstructed. An inaccessible length of pipe is one that cannot be directly removed by open trenching due to other structures (such as sidewalks, roadways, thoroughfares, buildings, and underground utilities) in close proximity to the A/C pipe to be replaced. An obstructed length of pipe is one with a section that has dropped or collapsed in a way that precludes passage of the guide line and/or the CTPS HDD line during the replacement process.

Additionally, we are requiring owners/operators of the CTPS AWP to document on the notification that sealed pipe will be used during the ACPRP and that no slurry (which contains ACM) is able to come in contact with the inside of the new pipe.

Lastly, the EPA is clarifying that the original intention of this work practice is for the replacement of a A/C pipe with a pipe of the same diameter. Due to the nature of close tolerance pipe Slurrification, which only uses an HDD chain ¼ inch larger than the diameter of the new pipe being replaced, there would be minimal soil added to the make-up of the slurry. However, if the owner/operator chose to ''upsize'' (using a new pipe with a larger diameter than the existing A/C pipe), the amount of surrounding soil being added to the slurry mixture would vary. In these situations, it is the responsibility of the owner/operator to make appropriate changes to the recipe of the drilling fluid, resulting in a nonfriable product that passes the friability test discussed in IV.E.2. of this document.

C. Conducting a Thorough Inspection of A/C Pipe

The EPA is adding to the thorough inspection requirements that owners/operators of any ACPRP must save a video recording of the inspection and make it available at the ACPRP work site for reference as needed by inspectors, owners, and operators during the ACPRP work. This is the current standard work practice across the underground construction industry.

D. Changes to the Sampling and Analysis Requirements

The EPA is requiring that a slurry sample be made available to the air quality regulatory authority within 15 days of the request. In our April 25, 2018, notice we stated that owners/operators must store a slurry sample

from each ACPRP using the CTPS AWP procedure for a period of no less than 2 years. For compliance assurance purposes, we are adding a requirement that this sample must be made available to the air quality regulatory authority for inspection within 15 days of request. We are also clarifying that the slurry sample be kept by the owner (typically the state or municipality). Because the owner is required to maintain storage of ACPRP samples, the air quality regulatory authority should go to the storage site to examine the slurry sample, rather than to request the sample be delivered or mailed; otherwise, the owner would no longer be in custody of the slurry sample for a minimum of 2 years, as required by this AWP.

E. Decontamination Procedures

Containment of all ACWM is required under the Asbestos NESHAP. The decontamination of equipment used for ACPRPs by the CTPS AWP procedure may generate wastewater bearing asbestos fibers. To achieve containment of this ACWM, we recommend owners/operators conduct decontamination so that all water is contained and filtered before being released to a storm water collection system. For more information on potential decontamination procedures that can be used to control asbestos-contaminated wash water, see ''Guidelines for Enhanced Management of Asbestos in Water at Ordered Demolitions,'' EPA–453/B–16–002a, July 2016, which is available at *www.epa.gov/asbestos* and in the docket to this document.

F. Clarification to Disposal Requirements

The EPA is clarifying the disposal requirements as a result of comments received on the proposed document. The EPA is prohibiting use of the slurry in any public thoroughfare, in any private use as fill material, as cover material at a landfill, or in any other use. The EPA is clarifying that, in accordance with the Asbestos NESHAP, the slurry must be disposed of as soon as practicable.

IV. What is the approved AWP for replacement of A/C pipe?

A. What are the results of the EPA's review of the CTPS AWP?

The EPA found that, with some changes, the AWP described in our April 25, 2018, proposed document is at least equivalent to the work practice in the Asbestos NESHAP. The changes to the AWP in the April 25, 2018, proposed document are based on comments received as previously discussed in sections II and III of this document.

Based upon our review of the proposed AWP request, the demonstrations of the work practice, studies on HDD technology, industry guidelines, and written materials including equipment, materials, slurry characteristics, testing, and waste specifications; we conclude that, by complying with the following list of requirements, this CTPS AWP will achieve emission reductions at least equivalent to emission reductions achieved under 40 CFR 61.145, 40 CFR 61.150, and 40 CFR 61.154, as required by the applicable Asbestos NESHAP, provided that adequate wetting accompanies all vertical access points, access trenches, and manholes to prevent VE, and that the A/C cementitious material resulting from this process is properly handled and contained during and after removal and properly disposed of as required by the Asbestos NESHAP.

The patent related to this process, ''Method of Replacing an Underground Pipe Section,'' is available from the U.S. Patent Office, patent number US8,641,326B2; February 4, 2014, and a copy is available in the docket. That patent deals with the replacement of low-pressure sewer pipes and indicates some parameters that may be different from the work practices in this document, depending on the soil composition, depth of pipe, and serviceable use of the pipe (*e.g.,* a low-pressure sewer, waste water, or fresh water pipe). While this patented process focuses on low-pressure sewer pipes, this AWP is being approved for all underground AC pipe replacement projects that properly follow the steps of the AWP. While this patented process is one used by the company requesting approval of this AWP, an owner/operator may use other methods that comply with the guidelines of this AWP, and are not required to use the patented process.

B. What inspection, operation, and maintenance requirements would apply?

1. Inspection

a. Prior to using the CTPS for an ACPRP, the owner/operator must conduct underground pipe inspections (*e.g.,* by using remote technologies like robotic cameras) and shall identify, locate, and mark onto an underground utility map of the area all identified potential areas of malfunctions, such as changes in pipe type, drops in the line, broken and off-center points, and changes in soil type.

b. Owners/operators of any ACPRP must save a video recording of the inspection and make it available at the ACPRP work site for reference as needed by inspectors, owners, and operators during the ACPRP work.

2. Operation and Maintenance

The owner/operator of a CTPS method system is required to install, operate, and maintain the drilling head train, CTPS liquid delivery system, and all equipment used to deliver adequate wetting at all vertical access points and cut lengths of pipe in accordance with their written standard operating procedures. Records of the standard operating procedures must be kept in accordance with section IV.C.2.b of this document.

C. What notification, recordkeeping and reporting requirements would apply?

1. If an underground ACPRP meets the applicability and threshold requirements under the NESHAP, then the Administrator must be notified in advance of the replacement in accordance with the requirements of the Asbestos NESHAP at 40 CFR 61.145(b). The owner/operator must note the location of the ACPRP on the notification form according to its 6-digit latitudinal/longitudinal coordinates. See 40 CFR 61.145(b) for more information on the notification requirements. Also see 40 CFR 61.04 for more information on the appropriate entity(ies) to notify on behalf of the Administrator. The appropriate entity(ies) are the same as the entity(ies) for other typical Asbestos NESHAP notifications under 40 CFR 61.145(b), which vary by jurisdiction as 40 CFR 61.04 explains.

2. The owner/operator is required to record and maintain for a period of 2 years:

a. Waste shipment records as required by 40 CFR 61.150(d);

b. Records of the standard operating procedures for the installation, operation, and maintenance of the drilling head train, CTPS liquid delivery system, and all equipment used to deliver adequate wetting at all vertical access points and cut lengths of pipe; and

c. Malfunction records (if applicable):

i. Records of VE events, including duration, time, and date of any VE event;

ii. Records of when and how each VE event was resolved. Indicate the date and time for each VE period, whether the VE event occurred at an exposed manhole, trench, or other vertical access

point, and the number of openings to the ambient air affected; and

iii. Records of a failed friability test, resulting in a sample that can be crushed, crumbled, or reduced to powder by hand pressure.

3. The owner (typically the state or municipality) is required to record and maintain for the lifetime of the new pipe, and provide to the regulatory authority within 15 days of request, the certificate from each sample friability test as required by section IV.E.2 of this document.

4. Each owner/operator is required to submit a malfunction report to the Administrator after any malfunction occurrence. The malfunction report must include the records in section IV.C.2.c of this document. The malfunction report must be submitted as soon as practical after the occurrence, but in no case later than 30 days. See 40 CFR 61.04 for more information on the appropriate entity(ies) to notify on behalf of the Administrator. The appropriate entity(ies) are the same as the entity(ies) for other typical Asbestos NESHAP notifications or reports, which vary by jurisdiction as 40 CFR 61.04 explains.

D. The CTPS Technique for A/C Pipe Replacement

1. By complying with the following list of requirements, this AWP will achieve emission reductions at least equivalent to emission reductions achieved under 40 CFR 61.145, 40 CFR 61.150, and 40 CFR 61.154, as required by the applicable Asbestos NESHAP.

2. Pipe at Terminals and Vertical Access Points

a. At the starting and terminal points, and at designated intervals along the length of pipe replacement, sections of pipe are exposed, and sometimes cut and removed at the vertical access points (*e.g.,* manholes, trenches).

b. The owner/operator must handle all sections of A/C pipe in accordance with 40 CFR 61.145 and 40 CFR 61.150 of the Asbestos NESHAP. Vertical access points (*e.g.,* manholes, trenches) are made at designated intervals along the length of pipe replacement for pressure relief and access to the A/C pipe to be replaced.

c. The distance between vertical access points is a function of the soil type, pipe size, pneumatic pressure on the CTPS head, and frictional drag on the line; and is determined for each project on a case-by-case basis by the owner/operator. Incorrect estimation of the vertical access point locations may result in a malfunction.

d. The owner/operator must avoid to the extent feasible, crumbling, pulverizing, or reducing to powder A/C pipe during the excavation of vertical access points. Water and suction should be used to uncover as much of the A/C pipe as is needed to begin the CTPS process.

e. Appropriate measures must be taken to prevent the slurry from coming into direct contact with the surrounding soils of the terminals and vertical access holes. The EPA recommends the use of plastic sheathing, or another type of barrier to prevent the slurry contacting the surrounding soil.

3. The CTPS Equipment Train

a. In order to achieve close tolerance and to minimize the thickness of the skim coat (the portion of waste slurry that remains on the exterior of the new pipe), the CTPS technique must use an HDD head train with a slightly larger (approximately ¼ inch) diameter than the new pipe.

b. The CTPS technology must use a heavy duty cutting and wetting train, made of hardened carbon steel, which is able to be fed directly around the pipe to be replaced.

c. The cutting head must be drawn around the existing pipe and must grind the old A/C pipe to a fine powder using a liquid delivery system as described in section IV.D.4 of this document. In order to adequately grind the existing A/C pipe into a fine powder, the EPA recommends maintaining a minimum speed of 240 revolutions per minute (RPM) for the grinding apparatus.

d. The process must return the A/C pipe to a cementitious slurry that is a homogenous mixture and stays adequately wet through disposal according the requirements of 40 CFR 61.145.

e. The owner/operator must ensure that the CTPS train pulls the replacement pipe behind it. The new pipe must be sealed to ensure no ACM contacts the inside.

4. Requirements for Liquid Delivery

a. The CTPS HDD train must be equipped with ports to deliver liquid materials to the drilling head.

b. Drilling fluids must be delivered through these ports to reduce frictional drag on the line, to lubricate the interface along the soil to pipe line, to provide a barrier between the surrounding ground water, soil, and rock and the pipe, and to support the close tolerance cylindrical void during the pipe replacement process.

c. Drilling fluid recipe must consist of a lubrication fluid, a hole sealing fluid (bentonite clay), and a material suspension fluid.

5. Adequate Wetting and No VE

a. The owner/operator is required to ensure that no VE are discharged to the air from the slurry.

b. Any opening to the atmosphere along the pipe is a potential source of asbestos emissions to the outside (ambient) air.

c. The owner/operator must ensure that dust suppression equipment (*i.e.,* dust suppression apparatus or manual misting) is placed at each vertical access point. The EPA recommends using amended water to prevent visible emissions at vertical access points.

d. If a new trench is dug to resolve a malfunction, the owner/operator must ensure that the new trench is equipped with dust suppression and follow the procedure in section IV.D.5.a-c of this document.

6. Slurry Characteristics

a. The owner/operator would be required to ensure that the slurry (including the excess slurry that remains as skim coat) is a homogenous mixture comprised of finely ground A/C pipe, drilling fluids, bentonite clay, and other materials suspended in solution that, when cured (a period of 48–56 hours), re-hardens so that it meets the sample friability test in section IV.E.2 of this document.

b. The slurry must meet the no VE requirements of 40 CFR 61.145 and 40 CFR 61.150.

E. Sampling, Testing, and Utility Map Notation Requirements

1. Sample Collection

a. After the slurry has been pumped from the vertical access points, but before disposal, the owner/operator of a CTPS method system is required to collect a 2-inch roughly spherical wet sample of the slurry.

b. A single sample must be collected for each project discharging to a single enclosed tank.

c. The owner/operator must seal the sample in a leak-tight container and allow the sample to harden and dry (usually 48–56 hours).

2. Sample Friability Test and Certification

a. When the sample is hardened and dry, the owner/operator would be required to attempt to crush the sample by hand.

i. If the sample cannot be crushed, crumbled, or reduced to powder by hand pressure, the owner/operator would be required to certify this as follows: ''The hardened slurry sample

from the ACPRP conducted on (date) at (location) could not be crushed, crumbled, or reduced to powder by hand pressure. I am aware it is unlawful to knowingly submit incomplete, false, and/or misleading information and there are significant criminal penalties for such unlawful conduct, including the possibility of fine and imprisonment.'' The owner (typically the municipality) would be required to maintain a signed certificate of this statement so that it is available to the EPA Administrator, local, and state agency officials within 15 days of request.

ii. If the sample can be crushed, crumbled, or reduced to powder by hand pressure, the owner/operator would be required to follow the malfunction reporting requirements in section IV.C.4 of this document.

iii. If a malfunction occurs, resulting in friable ACM left along the new pipe, the friable ACM must be retrieved and properly disposed of, or the site must be treated as an active asbestos waste disposal site under 40 CFR 61.154 of the Asbestos NESHAP and, upon closure, must comply with 40 CFR 61.151, including a notation on the deed or similar instrument as required by 40 CFR 61.151(e).

b. The sample that cannot be crumbled, pulverized, or reduced to powder by hand pressure is nonfriable, and the remaining slurry from that pipe replacement operation is likewise nonfriable.

c. After testing, the owner/operator must ensure that the sample is packaged in a leak-tight container for storage, labeled ''Asbestos Containing Material. Do not break or damage this sealed package,'' dated according to the ACPRP date of generation, stored in a secure location that is inaccessible to the general public (such as a locked storage unit), and is maintained by the owner (typically the state or municipality) for a period of 2 years.

d. After the 2-year retention period, the sample may be disposed of in a landfill authorized to accept ACWM.

e. A sample of the slurry must be made available to the air quality regulatory authority within 15 days of request.

i. Because the owner (typically the state or municipality) is required to maintain storage of ACPRP samples, the air quality regulatory authority should go to the storage site to examine the slurry sample, rather than to request the sample be delivered or mailed, because otherwise, the owner (typically the state or municipality) would no longer be in custody of the slurry sample for a minimum of 2 years, as required by this AWP.

3. Utility Map Notations

a. Owner/operators would be required to note utility maps according to the actual location identified by the 6-digit latitude/longitude coordinates of the newly laid line.

b. Notations would have to be maintained for the life of the new pipe by the owner/operator (*e.g.,* municipality or utility), and would have to be labeled as covered by a skim coat (the portion of waste slurry that remains on the exterior of the new pipe) of ACM for future work.

F. Trackable Pipeline Requirements

The owner/operator must ensure that the new pipeline is trackable by a locating wire (or other durable trackable material) laid with the new pipe.

G. Slurry Removal, Containment, Labeling, and Transportation Requirements

1. The slurry is removed at vertical access points using a vacuum attached to a tank (*e.g.,* vacuum truck).

2. The owner/operator would be required to ensure that the slurry remains in an adequately wet state during the slurrification process and in containment throughout the removal, transportation, and disposal processes meeting the requirements of 40 CFR 61.145 and 40 CFR 61.150.

3. All slurry produced as a result of conducting an ACPRP using the CTPS AWP must be labeled and transported in accordance with the corresponding requirements of 40 CFR 61.145 and 40 CFR 61.150 in the Asbestos NESHAP. The only slurry that may remain is the skim coat on the new pipe from that ACPRP. This skim coat is not subject to the removal and disposal requirements (subject to confirmation as nonfriable by the friability test), if left undisturbed in the ground.

H. Disposal Requirements

The following requirements apply to disposal of the slurry resulting from an ACPRP conducted using the CTPS AWP:

1. The slurry must be disposed of in slurry form and placed in leak tight containers in a landfill authorized to accept ACWM and meeting the requirements of 40 CFR 61.154.

2. The slurry must be managed at the disposal site using procedures meeting the requirements of 40 CFR 61.154.

3. The slurry must not be used in any public thoroughfare, in any private use as fill material, as cover material at a landfill, or in any other use.

4. In accordance with the Asbestos NESHAP, the slurry must be disposed of as soon as practicable.

I. Equipment Decontamination or Disposal

Persons conducting ACPRPs using the CTPS AWP may choose to either decontaminate the equipment so that no ACM remains within or on the equipment after each ACPRP or may use disposable linings/containers that prevent slurry from coming into direct contact with machinery and are disposed of as ACWM.

As noted in section III.E above, containment of all ACWM is required under the Asbestos NESHAP. The decontamination of equipment used for ACPRPs by the CTPS AWP procedure may generate wastewater bearing asbestos fibers. To achieve containment of this ACWM, we recommend owners/operators conduct decontamination so that all water is contained and filtered before being released to a storm water collection system. For more information on potential decontamination procedures that can be used to control asbestos-contaminated wash water, see ''Guidelines for Enhanced Management of Asbestos in Water at Ordered Demolitions,'' EPA–453/B–16–002a, July 2016, which is available at *www.epa.gov/asbestos* and in the docket to this document.

J. Application of Asbestos NESHAP Requirements

Except as noted in section IV.G.3 of this document, all other requirements of the Asbestos NESHAP that apply to renovations, including notification requirements found in 40 CFR 61.145(b), also apply to the CTPS AWP. Additionally, waste handling and disposal requirements found in 40 CFR 61.150 and 40 CFR 61.154 apply to the slurry (except as noted in section IV.G.3 of this document) and any other ACWM that is removed at the ACPRP. This document also uses terminology as defined in 40 CFR 61.141.

It is important to note that projects may not be broken up to avoid regulation under the Asbestos NESHAP, and the EPA has clarified the requirements of the Asbestos NESHAP as they relate to a project on several occasions. The ''EPA considers demolitions planned at the same time or as part of the same planning or scheduling period to be part of the same project. In the case of municipalities, a scheduling period is often a calendar year or fiscal year or the term of the contract.'' See 60 FR 38725 (July 28, 1995, Footnote 1). As stated in the circumvention section of the 40 CFR

part 61 General Provisions at 40 CFR 61.19, ''No owner or operator shall build, erect, install, or use any article, machine, equipment, process, or method, the use of which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous dilutants to achieve compliance with a VE standard, and the piecemeal carrying out of an operation to avoid coverage by a standard that applies only to operations larger than a specified size.'' As the Agency noted in a previous AD,[1] the relevant part of that requirement is the part that discusses the prohibition on the piecemeal carrying out of an operation to avoid coverage by a standard. Therefore, as required by 40 CFR 61.145(a)(4)(iii) and (iv), owners or operators (owner/operator) must predict the combined additive amount of RACM to be removed in the course of the renovation activities (or, in the case of emergency renovations, estimate that amount) over the calendar year to determine the applicability of the standard to a project.

Dated: May 30, 2019.

Panagiotis Tsirigotis,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2019–12085 Filed 6–7–19; 8:45 am]

BILLING CODE 6560–50–P

[1] Applicability Determination Number A020001. August 30, 2002. From George Czerniak, Chief, Air Enforcement and Compliance Assurance Branch, U.S. EPA Region 5, to Robert Swift. *https://cfpub.epa.gov/adi/index.cfm?fuseaction=home.dsp_show_file_contents&CFID=27301905&CFTOKEN=85118624&id=A020001.*

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0097; FRL–9991–65]

Certain New Chemicals or Significant New Uses; Statements of Findings for November and December 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from November 1, 2018 to December 31, 2018.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from November 1, 2018 to December 31, 2018.

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

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before

commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
P–18–0077	Urea, reaction products with N-butylphosphorothioic triamide and formaldehyde (CASRN: 2093385–47–6).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-155.*
P–16–0400	Alkanes, C11-16-branched and linear (CASRN: 1809170–78–2).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-145.*
J–18–0045	Biofuel producing *Saccharomyces cerevisiae* modified, genetically stable (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-143.*
J–18–0046–0047	Genetically modified microorganism (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-142.*
J–19–0002–0004	Genetically modified microorganism (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-141.*
P–18–0221	Polyglycerol reaction product with acid anhydride, etherified (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-139.*
P–18–0324	Organic acid dimethyl ester, polymer with mixed alkanediols and 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, trimethoxysilylalkylalkanamine-blocked (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-138.*
P–19–0006	Diisocyanate polymer blocked with alkoxyamine (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-137.*
P–17–0281	Polysiloxane-polyester polyol carboxylate (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-136.*
P–18–0007–0008	(P–18–0007) Glycerides, soya mono- and di-, epoxidized, acetates (CASRN: 2097734–14–8), (P–18–0008) Glycerides, C16–18 and C18-unsatd. mono- and di-, epoxidized, acetates (CASRN: 2097734–15–9).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-135.*
P–18–0212	Substituted carbomonocycle, polymer with alkyl alkenoate, alkenyl substituted carbomonocycle, substituted alkanediol, heteropolycycle, alkylene glycol and alkenoic acid, compd. with alkylamino alkanol; polymer exemption flag (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-134.*
SN–15–0009	Fatty acid amide (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3-determination.*
P–18–0219	Polythioether, short chain diol polymer terminated with aliphatic diisocyanate (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-133.*
P–18–0068	Metal, oxo alkylcarboxylate complexes (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-132.*
J–18–0042–0043	Biofuel producing *Saccharomyces cerevisiae* modified, genetically stable (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-131.*
P–18–0319	Plant oil fatty acids, alkyl esters (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-129.*
P–18–0152	Hydrolyzed functionalized di-amino silanol polymer (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-128.*
P–18–0147	Phenol, 4-ethenyl-, 1-substituted, polymer with 1-(1,1-substituted)-4-ethenylbenzene and ethenylbenzene, 2, 2′-(1,2-diazenediyl)bis[2-substituted]-initiated, hydrolyzed (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-126.*

EPA case No.	Chemical identity	Website link
P–18–0279	Substituted heteromonocycle, polymer with substituted alkanediol and diisocyanate substituted carbomonocyle, alkylene glycol acrylate-blocked (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-127.*
P–18–0136	1-Butanaminium, N,N,N-tributyl-, 2(or5)- [[benzoyl dihydrodioxo[(sulfophenyl)amino]heteropolycycle]oxy]-5(or 2)-(1,1- dimethylpropyl)benzenesulfonate (2:1) (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-125.*
P–17–0382	Amides, tallow, N,N-bis(2-hydroxypropyl) (CASRN 1454803–04–3).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-124.*
P–18–0054	2-Alkenoic acid, 2-alkyl-, 2-alkyl ester, polymer with alkyl 2-alkenoate, 2-substitutedalkyl 2-alkenoate and 2-substitutedalkyl 2-alkyl-2-alkenoate, esters with carboxylic acids, tert alkylperoxoate initiated; polymer exemption flag (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-123.*
P–18–0078	2-Alkenoic acid, 2-alkyl-, 2-alkyl ester, polymer with alkyl 2-alkenoate, 2-substitutedalkyl 2-alkenoate and 2-substitutedalkyl 2-alkyl-2-alkenoate, tert alkylperoxoate initiated; polymer exemption flag (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-122.*
P–18–0261	Metal, alkylcarboxylate oxo complexes (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-121.*
J–18–0044	*Saccharomyces cerevisiae* NE095	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-120.*
J–18–0041	*E. coli K*-12 C003, arsenic detecting strain of *E. coli* with extra-chromosomal elements, including an intergeneric screening marker (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-119.*
P–18–0233	Alkyl alkenoic acid, alkyl ester, telomer with alkylthiol, substituted carbomonocycle, substituted alkyl alkyl alkenoate and hydroxyalkyl alkenoate, tert-butyl alkyl peroxoate-initiated (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-118.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 3, 2019.

Leo Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–12080 Filed 6–7–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0097; FRL–9991–67]

Certain New Chemicals or Significant New Uses; Statements of Findings for October 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from October 1, 2018 to October 31, 2018.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from October 1, 2018 to October 31, 2018.

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

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the ''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
P–18–0224–0225	(P–18–0224) Alkenoic acid, polymer with alkenylcarbomonocycle, [alkanediylbis(substitutedalkylene)] bis[heteromonocycle] and (alkylalkenyl) aromatic, salt (generic name) and (P–18–0225) Alkenoic acid, polymer with substituted alkyloxirane, alkenylcarbomonocycle, alkyl substituted alkyl alkanediol and (alkylalkenyl) aromatic salt (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-117.*
P–18–0030	Poly[oxy(methyl-alkylendiyl)], a,a′,a″-1,2,3-alkanetriyltris[w-hydroxy-, polymer with 1,1′-alkylenebis[4-isocyanatocarbomonocycle], 2-substituted ethyl acrylate- and 2-substituted ethyl methacrylate-blocked (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-116.*
J–18–0019–0021	Genetically modified microorganism (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-115.*
J–18–0026–0027	Biopolymer producing modified microorganism(s) with chromosomally-borne modifications (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-114.*
P–18–0041	2,5-Furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1H-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate.	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-113.*
P–16–0581	alpha 1,3-polysaccharide (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-112.*
P–16–0575	Glucosyltransferase (International Union of Biochemistry and Molecular Biology (IUBMB) enzyme nomenclature recommendations: IUBMB Number 2.4.1.5).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-111.*
P–16–0483–0484	(P–16–0483) Inorganic acids, metal salts, compds. with modified heteroaromatics (generic name) and (P–16–0484) inorganic acid, metal salt, compd. with substituted aromatic heterocycle (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-110.*

EPA case No.	Chemical identity	Website link
P–16–0380–0385	(P–16–0380) Formic acid, compounds with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts) (generic name), (P–16–0381) propanoic acid, 2-hydroxy-, compounds with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts) (generic name), (P–16–0382) formic acid, compounds with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts) (generic name), (P–16–0383) formic acid, compounds with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts) (generic name), (P–16–0384) propanoic acid, 2-hydroxy-, compds. with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products formates (salts) (generic name), and (P–16–0385) formic acid, compounds with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1,3-dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products sulfamates(salts) (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-109.*
P–16–0354–0355	Esteramine (generic names)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-108.*
P–16–0192	Silanized amorphous silica (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-107.*
P–18–0227	D-Glucaric acid (CASRN: 87–73–0)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-106.*
P–18–0137	Alkylsilsesquioxane, ethoxy-terminated (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-105.*
P–18–0116	Fatty acid oil reaction product with fatty acid oil (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-104.*
P–18–0100	Substituted alkanoic acid polymer with alkylcarbonate, alkanediols and isocyanate substituted carbomonocycles, sodium salt, alkenoic acid substituted polyol reaction products-blocked (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-103.*
P–18–0102	Alkenoic acid, ester with [oxybis(alkylene)]bis[alkyl-substituted alkanediol], polymer with alkylcarbonate, alkanediols, substituted alkanoic acid and isocyanate and alkyl substituted carbomonocycle, sodium salt (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-103.*
P–18–0070	Waste plastics, polyester, depolymd. with glycols, polymers with dicarboxylic acids (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-102.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 3, 2019.

Leo Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–12081 Filed 6–7–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0271; FRL–9994–26]

Certain New Chemicals or Significant New Uses; Statements of Findings for January–March 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(g) of the Toxic Substances Control Act (TSCA) requires EPA to publish in the **Federal Register** a statement of its findings after its review of TSCA section 5(a) notices when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to premanufacture notices (PMNs), microbial commercial activity notices (MCANs), and significant new use notices (SNUNs) submitted to EPA under TSCA section 5. This document presents statements of findings made by EPA on TSCA section 5(a) notices during the period from January 1, 2019 to March 31, 2019.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460–0001; telephone number: 202–564–8469; email address: *schweer.greg@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the PMNs addressed in this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0097, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave, NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

This document lists the statements of findings made by EPA after review of notices submitted under TSCA section 5(a) that certain new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment. This document presents statements of findings made by EPA during the period from January 1, 2019 to March 31, 2019.

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

TSCA section 5(a)(3) requires EPA to review a TSCA section 5(a) notice and make one of the following specific findings:

- The chemical substance or significant new use presents an unreasonable risk of injury to health or the environment;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects of the chemical substance or significant new use;
- The information available to EPA is insufficient to permit a reasoned evaluation of the health and environmental effects and the chemical substance or significant new use may present an unreasonable risk of injury to health or the environment;
- The chemical substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance; or
- The chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment.

Unreasonable risk findings must be made without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant under the conditions of use. The term ''conditions of use'' is defined in TSCA section 3 to mean ''the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

EPA is required under TSCA section 5(g) to publish in the **Federal Register** a statement of its findings after its review of a TSCA section 5(a) notice when EPA makes a finding that a new chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment. Such statements apply to PMNs, MCANs, and SNUNs submitted to EPA under TSCA section 5.

Anyone who plans to manufacture (which includes import) a new chemical substance for a non-exempt commercial purpose and any manufacturer or processor wishing to engage in a use of a chemical substance designated by EPA as a significant new use must submit a notice to EPA at least 90 days before commencing manufacture of the new chemical substance or before engaging in the significant new use.

The submitter of a notice to EPA for which EPA has made a finding of ''not likely to present an unreasonable risk of injury to health or the environment'' may commence manufacture of the chemical substance or manufacture or processing for the significant new use notwithstanding any remaining portion of the applicable review period.

IV. Statements of Administrator Findings Under TSCA Section 5(a)(3)(C)

In this unit, EPA provides the following information (to the extent that such information is not claimed as Confidential Business Information (CBI)) on the PMNs, MCANs and SNUNs for which, during this period, EPA has made findings under TSCA section 5(a)(3)(C) that the new chemical substances or significant new uses are not likely to present an unreasonable risk of injury to health or the environment:

- EPA case number assigned to the TSCA section 5(a) notice.
- Chemical identity (generic name, if the specific name is claimed as CBI).
- Website link to EPA's decision document describing the basis of the

''not likely to present an unreasonable risk'' finding made by EPA under TSCA section 5(a)(3)(C).

EPA case No.	Chemical identity	Website link
P–19–0035	Acetamide, 2-(4-methylphenoxy)-N-1H-pyrazol-3-yl-N-(2-thienylmethyl)- (CASRN: 1374760–95–8).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-180.*
P–18–0229	Modified branched alkenyl acid, alkyl ester, homopolymer (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-174.*
P–18–0179–0181	(P–18–0179) Phenol, polymer with formaldehyde and phenolic resin, sodium salt, (P–18–0180) Phenol, polymer with formaldehyde and phenolic resin, potassium salt, (P–18–0181) Phenol, polymer with formaldehyde and phenolic resin, potassium sodium salt (generic names).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-173.*
P–17–0191	Alkyldiamine, aminoalkyl dimethylaminoalkyl dimethyl-, reaction products with propylene oxide (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-172.*
P–18–0085	Fatty acids reaction products with ethyleneamines and dialkyl ester (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-170.*
P–18–0101	Pentaerythritol, mixed esters with linear and branched fatty acids (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-169.*
P–17–0220	2-Oxepanone, reaction products with alkylenediamine-alkyleneimine polymer, 2-[[(2-alkyl)oxy]alkyl]oxirane and tetrahydro-2H-pyran-2-one (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-168.*
P–19–0026	Alkanoic acid, compounds with substituted carbomonocycle-dialkyl-alkanediaminehalosubstitued heteromonocycle-polyalkylene glycol polymerdialkanolamine reaction products (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-167.*
P–18–0307	Alkyl alkenoic acid, alkyl ester, telomer with alkyl alkenoate, substituted alkyl alkyl alkenoate, alkylthiol, substituted carbomonocycle, hydroxyalkyl alkyl alkenoate and alkyl alkyl alkenoate (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-166.*
P–19–0009	Carbonmonocycles, polymer with haloalkyl substituted heteromonocycle and hydro-hydroxypoly[oxy(alkyl-alkanediyl)], dialkyl-alkanediamineterminated, hydroxyalkylated, acetates (salts) (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-165.*
P–18–0284	Inorganic acid, reaction products with alkyl alcohol (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-164.*
P–18–0278	Isophthalic acid, polymer with terephthalic acid and C4 and C6 dialkyl amines (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-163.*
J–19–0006–0008	Genetically modified microorganism for the production of a chemical substance (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-162.*
P–19–0025	11-Docosene (CASRN: 62978–77–2)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-161.*
P–19–0021–0022	(P–19–0021) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkylene carbonate, alkanediol, isocyanate, compd. with alkylamine, (P–19–0022) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkyl carbonate, alkanediol, isocyanate, compd. with alkylamine (generic names).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-160.*
P–19–0002	Polyaromatic symmetrical tetracarboxylic acid (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-159.*
P–18–0272	Metal, alkylcarboxylate oxo complexes (generic name)	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-158.*
P–18–0169	Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with dimethyl carbonate, 1,6-hexanediol, diamine and 1,1′-methylenebis[4-isocyanatocyclohexane], acrylate-blocked, compds. with triethylamine (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-157.*
P–17–0119	Alkyl alkenoic acid, alkoxyalkyl ester, polymer with alkyl alkenoate, alkyl alkyl alkenoate and tris alkyl silyl alkyl alkenaote (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-156.*
P–18–0077	Urea, reaction products with N-butylphosphorothioic triamide and formaldehyde (CASRN: 2093385–47–6).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-155.*

EPA case No.	Chemical identity	Website link
P–18–0132	Substituted benzene, 4-methoxy-2-nitro-5-[2-[(1E)-1-[[(2-methoxyphenyl)amino]carbonyl]-2-oxopropylidene]hydrazinyl]-, sodium salt (1:1) (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-154.*
P–18–0118–0119	(P–18–0118) Oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1′-methylenebis[4-isocyanatobenzene], and glycerol-propylene oxide polymer, (P–18–0119) Oxirane, 2-methyl-, polymer with methoxirane homopolymer, 1,1′- methylenebis[isocyanatobenzene], and glycerol-propylene oxide polymer (generic names).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-153.*
P–18–0107	Alcohol capped polycarbodiimide from diethyldiisocyanatobenzene (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-152.*
P–18–0379	Cashew nutshell liquid polymer with Epichlorohydrin, formaldehyde, phenol, amines and glycol (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-151.*
P–18–0277	Poly[2-(Dimethylamino)ethyl acrylate chloride salt, vinyl acetate, methacrylic acid and alkyl acrylates] (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-150.*
P–19–0007	Alkenoic acid, alkyl-, hydroxyalkyl ester, polymer with alkylalkenoate, alkenylcarbomonocycle, hydroxyalkylalkenoate, alkyl substituted alkenoate and heteromonocycle, alkyl substituted peroxoate-initiated, polymers with [substituted alkanenitrile]-initiated acrylic acid-alkane acrylates-alkyl substituted carbomoncycle polymer; polymer exemption flag (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-149.*
P–17–0387–0388	Dicarboxylic acids, polymers with alkanoic acid, alkanediol, susbtituted-alkylalkanoic acid, substituted alkyl carbomonocyle, alkanedioic acid and alkanediol, alkanolamine blocked compds with alkanolamine (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-148.*
P–19–0008	Substituted polyalkylenepolycarbomonocycle ester, polymer with dialkanolamine, (hydroxyalkoxy)carbonyl] derivs., (alkoxyalkoxy) alkanol blocked (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-147.*
P–18–0238	Saccharide reaction products with acid anhydride, etherified (generic name).	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-146.*
P–18–0020	Butanedioic acid, polymer 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.	*https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/tsca-section-5a3c-determination-144.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 3, 2019.

Leo Schweer,

Chief, New Chemicals Management Branch, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–12083 Filed 6–7–19; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Regular Meeting; Farm Credit System Insurance Corporation Board

AGENCY: Farm Credit System Insurance Corporation.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

DATES: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 13, 2019, from 2:00 p.m. until such time as the Board concludes its business.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102. Submit attendance requests via email to *VisitorRequest@FCA.gov.* See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056, *aultmand@fca.gov.*

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. Please send an email to *VisitorRequest@FCA.gov* at least 24 hours before the meeting. In your email include: Name, postal address, entity you are representing (if applicable), and telephone number. You will receive an email confirmation from us. Please be prepared to show a photo identification when you arrive. If you need assistance for accessibility reasons, or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit System Insurance Corporation Board, at (703) 883–4009. The matters to be considered at the meeting are:

Closed Session

A. Risk Management Reports

- FCSIC Report on Insurance Risk
- 2018 Dynamic Capital Adequacy Test Results

Open Session

B. Approval of Minutes

- March 14, 2019

C. Quarterly Business Reports

- FCSIC Financial Report
- Report on Insured Obligations
- Report on Annual Performance

D. New Business

- Mid-Year Review of Insurance Premium Rates

Dated: June 5, 2019.

Dale Aultman,

Secretary, Farm Credit System Insurance Corporation.

[FR Doc. 2019–12143 Filed 6–7–19; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee, Diversity and Digital Empowerment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) announces the June 24, 2019, meeting and agenda of the Advisory Committee on Diversity and Digital Empowerment (ACDDE).

DATES: June 24, 2019, beginning at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer (DFO), Federal Communications Commission, Media Bureau, (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov*; or Brenda Villanueva, Deputy Designated Federal Officer (DFO), (202) 418–7005, *Brenda.Villanueva@fcc.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to members of the public. The FCC will accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio and video coverage of the meeting over the internet at *www.fcc.gov/live.* Oral statements at the meeting by parties or entities not represented on the ACDDE will be permitted to the extent time permits and at the discretion of the ACDDE Chair and the DFO. Members of the public may submit comments to the ACDDE in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the ACDDE should be filed in Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fulfill the request. Please allow at least five days' notice; last minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: The agenda at this meeting will feature a report from each of the ACDDE Working Groups. Each of the Working Groups will report on their work under the current ACDDE charter which expires July 5, 2019. The *Broadcast Diversity and Development Working Group* will present a summary report on the ACDDE March 7, 2019 broadcast symposium, ''Exploring Strategies That Have Advanced Media Diversity.'' The *Digital Empowerment and Inclusion Working Group* will report on its assessment of access, adoption, and use of broadband and new technologies by under-resourced communities. The *Diversity in Tech Working Group* will report on its best practices guide pertaining to hiring, promotion, and retention of women and minorities in tech industries.

The Committee's mission is to provide recommendations to the FCC on how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees. The Committee's role is to provide recommendations on how to ensure that disadvantaged communities are not denied the wide range of opportunities made possible by next-generation networks and develop best practices regarding training and hiring opportunities for women and minorities to encourage diversity in the tech industry.

This agenda may be modified at the discretion of the ACDDE Chair and the DFO.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2019–12074 Filed 6–7–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–19–0980]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *National Environmental Assessment Reporting System (NEARS)* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 6, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Environmental Assessment Reporting System (NEARS) (OMB Control No. 0920–0980, Expiration Date: 08/31/2019)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval for the National Environmental Assessment Reporting System (NEARS) to collect data from foodborne illness outbreak environmental assessments routinely conducted by local, state, territorial, or tribal food safety programs during outbreak investigations. Prior to the development of NEARS, environmental assessment data were not collected at the national level. The data reported through this surveillance system provides timely information on the causes of outbreaks, including environmental factors associated with outbreaks, and are essential to environmental public health regulators' efforts to respond more effectively to outbreaks and prevent future, similar outbreaks. This surveillance system was specifically designed to link to CDC's National Outbreak Reporting System (NORS), a disease (*e.g.,* enteric diseases transmitted by food) outbreak surveillance system. NEARS was developed by the Environmental Health Specialists Network (EHS-Net), a collaborative network of CDC, the U.S. Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), and nine state food safety programs (California, Connecticut, Georgia, Iowa, New York, Minnesota, Oregon, Rhode Island, and Tennessee). The network consists of environmental health specialists (EHSs), epidemiologists, and laboratorians. EHS-Net developed a standardized protocol for identifying, reporting, and analyzing data relevant to foodborne illness outbreak environmental assessments.

While conducting environmental assessments during outbreak investigations is routine for food safety program officials, reporting information from the environmental assessments to CDC is not routine. Local, state, federal, territorial, and tribal food safety programs are the primary respondents for this data collection. One official from each participating program will report environmental assessment data on outbreaks. These programs are typically located in public health or agriculture agencies. In the U.S., there are approximately 3,000 such agencies. Currently, 31 state and local health departments are registered to report data on outbreaks to NEARS. Based on our experience over the past five years, we expect up to 10 additional local and state public health departments to register to report outbreak data to NEARS over the next three years. It is not possible to determine exactly how many outbreaks will occur in the future, nor where they will occur. Based on past trends, it is likely that up to 300 foodborne illness outbreaks may be reported annually to NEARS from up to 41 entities for the duration of the next PRA clearance. Only programs in the jurisdictions in which these outbreaks occur would report to NEARS. Thus, not every program of the approximate 3,000 programs will respond every year. Assuming each outbreak occurs in a different jurisdiction, there will be one respondent per outbreak.

The activities associated with NEARS that require a burden estimate consist of training, observing, data recording, and data reporting events. The first activity is the training for the food safety program personnel participating in NEARS. These staff will be encouraged to attend a Skype Meeting (*i.e.,* webinar) training session conducted by CDC staff. Training burden is based on the maximum expected participation from the reporting entities which could be up to 10 additional local and state health departments. We estimate the burden of this training to be a maximum of two hours. Respondents will only be required to take this training one time. Assuming a maximum participation of up to 10 programs and about five staff being trained at each participating program, the total estimated burden associated with this training is 100 hours.

Food safety program personnel participating in NEARS will also be encouraged to complete CDC's Environmental Assessment Training Series (EATS). This eCourse provides training to staff on how to use a systems approach in foodborne illness outbreak environmental assessments. We estimate the burden of this training to be a maximum of 10 hours. Respondents will only have to take this training one time. Assuming a maximum participation of up to 10 programs and approximately five staff being trained at each program, the estimated burden associated with this training is 500 hours.

Data reporting activities for NEARS will be done once for each establishment involved in the outbreak. Information collection activities for NEARS consist of the following: NEARS data reporting and NEARS manager interview. For each outbreak, the respondent (one official from each participating program) will spend around 30 minutes recording environmental assessment data on pen and paper. Assuming a maximum of 300 outbreaks, the estimated annual burden is 150 hours for recording observations.

The manager interview will be conducted at each establishment associated with an outbreak and data is initially recorded using pen and paper. The respondents for this activity are the retail food managers of the outbreak establishments. Most outbreaks are associated with only one establishment; however, some are associated with multiple establishments. We estimate that a maximum of four manager interviews will be conducted per outbreak. Each interview and data reporting will take about 20 minutes. Assuming a maximum of 300 outbreaks, the estimated annual burden is 400 hours. Web-based data entry for both data recording and the manager interview will be combined. Data entry into the NEARS system is expected to take approximately 40 minutes for the combined activities, for a total of 200 burden hours. The total estimated annual burden for this information collection is 1,350 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Food safety program personnel.	NEARS Food Safety Program Training	50	1	2
	NEARS e-Learning (screenshots)	50	1	10
	NEARS Data Recording (paper form)	300	1	30/60
	NEARS Data reporting and manager's interview (web entry)	300	1	40/60
Retail food personnel	NEARS Manager Interview	1,200	1	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–12136 Filed 6–7–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–19–0852; Docket No. CDC–2019–0026]

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 Prevalence Survey of Healthcare-Associated Infections and Antimicrobial Use in U.S. Acute Care Hospitals. This project examines the numbers and types of Healthcare-Associated Infections and causative pathogens, types of antimicrobial drugs (such as antibiotics) used, and the quality of antimicrobial prescribing in U.S. acute care hospitals.

DATES: CDC must receive written comments on or before August 9, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2019–0026 by any of the following methods:

- *Federal eRulemaking Portal: 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.*

Please note: Submit all comments through the Federal eRulemaking portal (regulations.gov) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: 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.*

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

Prevalence Survey of Healthcare-Associated Infections and Antimicrobial Use in U.S. Acute Care Hospitals (OMB Control No. 0920–0852, Exp. 12/31/2019)—Extension—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Preventing healthcare-associated infections (HAIs) and improving antimicrobial use (AU) are CDC and national priorities. An essential step in reducing the occurrence of HAIs is to estimate accurately the burden of these infections in U.S. acute care hospitals and to describe the types of HAIs and causative pathogens. Periodic assessments of the magnitude and types of HAIs and AU occurring in all patient populations within acute care hospitals are needed to inform decisions by policy makers and hospital infection control personnel (ICP) regarding appropriate targets and strategies for HAI prevention and antimicrobial stewardship.

Since 2009, CDC has conducted four prevalence surveys (*i.e.,* pilot survey in 2009, limited-scale survey in 2010, and two full-scale surveys in 2011 and 2015) in partnership with the CDC's Emerging Infections Program (EIP) sites. Findings from the most recent survey showed a reduction in the percentage of patients with healthcare-associated infections compared with 2011.

Minor adjustments to data collection instruments since the previous 2016 OMB approval have been made. These

adjustments were made to enhance future analyses and utility of the survey data. These changes are non-substantive and are not expected to increase the public reporting burden. An extension of the prevalence survey's existing OMB approval is sought to allow a repeat HAI and AU Prevalence Survey to be performed in 2020. A repeat survey will allow assessment of changes in HAI and AU prevalence, pathogen distribution, and quality of antimicrobial prescribing. These data will also allow CDC and its partners to continue to monitor HAI and AU trends, to measure progress in meeting national targets, and to further refine prevention strategies.

In the 2020 survey, data collection will occur within acute care general hospitals of varying size in each of the 10 EIP sites (*i.e.,* CA, CO, CT, GA, MD, MN, NM, NY, OR, & TN).

ICP in participating hospitals may assist EIP site personnel in collecting demographic and limited clinical data from the electronic or paper-based medical records of a sample of randomly selected patients on a single day in 2020. Patients will not be interviewed, and no direct interaction with patients will occur. Hospital and patient-level data will be collected using unique identification codes. EIP site personnel will submit hospital and patient-level data to CDC using a secure data management system.

Based on experiences from previous surveys, the time required to complete the Healthcare Facility Assessment Form (HFA) and Patient Information Form (PIF) is estimated to be 45 and 17 minutes, respectively. To conduct the full-scale survey in a three-year approval period, 100 hospital respondents will complete the HFA one time and the PIF on average 63 times per year. The total estimated annualized public burden is 1,860 hours, which represents no change from the 2016 OMB approval.

To assess changes in HAIs and AU over time, EIP sites will seek participation from the same hospitals that participated in prior surveys. These hospitals were originally selected for participation using a stratified random sampling scheme based on the number of staffed acute care beds (*i.e.,* small: <150 staffed beds; medium: 151–399 staffed beds; large: >400 staffed beds). Each site will also have the option to recruit additional hospitals for a total of up to 30 in each site. As in previous surveys, hospital participation will remain voluntary. Within each participating hospital, EIP site personnel will establish patient sample size targets based on the number of staffed acute care beds (*e.g.,* up to 75 patients in small hospitals, 75 patients in medium hospitals, and 100 patients in large hospitals).

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)
Hospital Staff (*i.e.,* Infection Preventionist).	Healthcare Facility Assessment	100	1	45/60	75
	Patient Information Form	100	63	17/60	1,785
Total					1,860

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2019–12137 Filed 6–7–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–855R]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by July 10, 2019.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C.

3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved information collection request; *Title of Information Collection:* Reassignment of Medicare Benefits; *Use:* The reassignment application is submitted at the time the provider/supplier first reassigns of his/her Medicare benefits to a group practice, as well as any subsequent reassignments, changes to current reassignment information or terminations of established reassignments as requested by the provider/supplier or group. The application is used by the Medicare Administrative Contractor (MAC) to collect data to assure the applicant has the necessary information that allows the MAC to correctly establish, change, or terminate the reassignment.

The collection and verification of reassignment information defends and protects our beneficiaries from illegitimate providers/suppliers. These procedures also protect the Medicare Trust Fund against fraud. It gathers information that allow Medicare contractors to ensure that the provider/supplier is not sanctioned from the Medicare and/or Medicaid program(s), or debarred, or excluded from any other Federal agency or program. The data (*e.g.,* Social Security Numbers, Employer Identification Numbers) collected also ensures that the applicant has the necessary credentials to provide the health care services for which they intend to bill Medicare through the reassignment. This is sole instrument implemented for this purpose. *Form Number:* CMS–855R (OMB control number: 0938–1179); *Frequency:* Occasionally; *Affected Public:* Private Sector; Businesses or other for-profits, Not-for-profit institutions; *Number of Respondents:* 357,628; *Number of Responses:* 357,628; *Total Annual Hours:* 89,407. For policy questions regarding this collection, contact Kimberly McPhillips at 410–786–5374.

Dated: June 5, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–12118 Filed 6–7–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator of the Administration for Community Living the following authorities vested in the Secretary:

• The authority to oversee and administer the implementation of the Recognize, Assist, Include, Support, and Engage Family Caregivers Act of 2017 (Pub. L. 115–119), commonly referred to as the ''RAISE Family Caregivers Act''. This authority may be redelegated, but only to an officer or inferior officer as those terms are used in Art. II, § 2, cl. 2 of the U.S. Constitution.

This delegation excludes the authority to issue regulations and appoint non-federal council members, and shall be exercised in accordance with the Department's applicable policies, procedures, and guidance.

Dated: June 3, 2019.

Alex M. Azar II,

Secretary.

[FR Doc. 2019–12140 Filed 6–7–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator of the Administration for Community Living the following authorities vested in the Secretary:

• The authority to oversee and administer the implementation of the Supporting Grandparents Raising Grandchildren Act (Pub. L. 115–196). This authority may be redelegated, but only to an officer or inferior officer as those terms are used in Art. II, § 2, cl. 2 of the U.S. Constitution.

This delegation excludes the authority to issue regulations and appoint non-federal council members, and shall be exercised in accordance with the Department's applicable policies, procedures, and guidance. This delegation is effective upon date of signature.

Dated: June 3, 2019.

Alex M. Azar II,

Secretary.

[FR Doc. 2019–12141 Filed 6–7–19; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3631]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by July 10, 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 0910–0816. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption; 21 CFR Part 112

OMB Control Number 0910–0816—Revision

To minimize the risk of serious adverse health consequences or death from consumption of contaminated produce, we have established science-based minimum standards for the safe growing, harvesting, packing, and holding of produce, meaning fruits and vegetables grown for human consumption. The standards are codified in part 112 (21 CFR part 112) and set forth procedures and processes that include information collection activities such as establishing monitoring and sampling plans, documenting data and training, and ensuring disclosure that produce for human consumption meets these requirements. The regulations also provide for certain exemptions and variances to qualified respondents. We use the information to verify that the standards established by the regulation are followed such that produce entering the marketplace is reasonably unlikely to be associated with foodborne illness.

In addition to the referenced regulations, we developed two draft guidance documents: ''Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' and ''Compliance with and Recommendations for Implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption for Sprout Operations;'' both are available at *https://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/default.htm.* The former was developed to help covered farms comply with the requirements of the Produce Safety regulation. This draft guidance, when finalized, will not create any additional burden not already considered as part of the Produce Safety regulation.

The latter (the Sprouts draft guidance) was developed to assist sprout operations also subject to the Produce Safety regulation. Sprouts represent a special food safety concern because the conditions under which they are produced (time, temperature, water activity, pH, and available nutrients) are ideal for the growth of pathogens, if present. The Sprouts draft guidance, when finalized, will assist sprout operations subject to the regulations in part 112 in complying with the sprout-specific requirements in subpart M.

In the **Federal Register** of February 28, 2019 (84 FR 6793), we published a 60-day notice requesting public comment on the proposed collection of information. A number of comments were received; however, only those responsive to the information collection topics solicited are discussed here.

(Comment 1) One comment suggested that some entities such as tree nut hullers and shellers may be overly burdened by the definition of a secondary activities farm, which may cause it to be covered by regulations promulgated under the Preventive Controls rule as well as the Produce Safety rule. The comment argues that an entity of this sort should be covered only by the Produce Safety regulation.

(Response) In the **Federal Register** of January 5, 2018 (83 FR 598), we announced the availability of the guidance for industry ''Policy Regarding Certain Entities Subject to the Current Good Manufacturing Practice and Preventive Controls, Produce Safety, and/or Foreign Supplier Verification Programs'' in which we indicated our intent to exercise enforcement discretion for the Preventive Controls for Human Food requirements for facilities that would be secondary activities farms except for ownership of the facility.

Our intent is to exercise enforcement discretion for any operation not located on a primary production farm that is dedicated to harvesting, packing, and/or holding raw agricultural commodities while we pursue future rulemaking/solutions to relevant issues. The guidance provides examples of the types of facilities likely to fit within this category as facilities engaged in nut hulling and shelling operations.

(Comment 2) One comment suggested that there should be documentation for the source of all products used for processing produce as well as for daily testing of the water used for produce.

(Response) We assume that the phrase ''products used for processing produce'' refers to herbicides, pesticides, or fertilizers used when growing produce. Under various regulations of FDA and the Environmental Protection Agency, these substances are regulated for proper usage to not endanger human health.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity in 21 CFR part 112	Number of recordkeepers	Number of records per recordkeeper [2]	Total annual records	Average burden per recordkeeping [2]	Total hours
Exemptions under § 112.7	3,285	1	3,285	0.5 (30 minutes)	1,643
Training under § 112.30	24,420	1	24,420	7.25	177,045
Testing requirements for agricultural water under §§ 112.44 and 112.45.	48,361	2.990	144,599	0.825 (~50 minutes)	119,294
Records related to agricultural water	160,605	2.242	360,076	2.160	777,765
Testing requirements for sprouts under §§ 112.144, 112.145, and 112.147.	126	245.660	30,953.16	0.825 (~50 minutes)	25,536
Records related to sprouts	126	62.061	7,819.686	1.412 (~85 minutes)	11,041
''Compliance with and Recommendations for Implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption for Sprout Operations''.	126	233	29,358	1	29,358
Documentation supporting compliance with § 112.2.	4,568	1	4,568	0.079	361
Total	241,617		605,079		1,142,043

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Numbers rounded to nearest 1/1,000.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

21 CFR part 112	Number of respondents	Number of disclosures per respondent	Total disclosures	Average burden per disclosure	Total hours
Disclosure under §§ 112.2, 112.6, 112.31, 112.33, and 112.142	77,165	3.459	266,914	1.422	379,551

[1] There are no capital costs or operating or maintenance costs associated with this collection of information.

Section 112.7 (21 CFR 112.7) requires farms eligible for the qualified exemption in accordance with § 112.5 (21 CFR 112.5) to maintain the records necessary to demonstrate that the farm satisfies the criteria for the qualified exemption, including a written record reflecting that the owner, operator, or agent in charge of the farm has performed an annual review and verification of the farm's continued eligibility for the qualified exemption. We estimate that 3,285 farms are eligible for the qualified exemption and that each farm will spend an average of 0.5 hours per year to maintain one record. Therefore, 3,285 recordkeepers × 0.5 average hours per recordkeeping = 1,642.5 hours (rounded to 1,643) to meet the recordkeeping requirements of § 112.7.

Section 112.30 (21 CFR 112.30) requires the maintenance of records of required training of personnel, including the date of training, topics covered, and persons trained. We estimate that 24,420 farms maintain one record of required training and spend an average of 7.25 hours per year on recordkeeping. Therefore, 24,420 recordkeepers × 7.25 average hours per recordkeeping = 177,045 hours to meet the recordkeeping requirements of § 112.30.

Although compliance dates for the agricultural water provisions (subpart E) for covered produce other than sprouts are delayed to January 26, 2024, for very small businesses, January 26, 2023, for small businesses, and January 26, 2022, for all other businesses, we have estimated the burden. Section 112.46 (21 CFR 112.46) requires testing agricultural water subject to the requirements of §§ 112.44 and 112.45 (21 CFR 112.44 and 112.45). We estimate that 48,361 farms that will conduct these tests. Thus, it is estimated that about three (2.990) records for each farm will spend an average of 0.825 hours per record on testing water. Therefore, 48,361 farms × 2.990 records × 0.825 average hours per recordkeeping = 119,294.175 hours (rounded to 119,294) to meet the recordkeeping requirements of §§ 112.44 and 112.45.

For records related to agricultural water, we estimate that there are 160,605 recordkeepers each maintaining just over 2 records (2.242), with each recordkeeping taking just over 2 hours (2.160). Therefore, 160,605 recordkeepers × 2.242 records × 2.160 hours = 777,765.046 hours (rounded to 777,765) for the recordkeeping burden related to agricultural water.

Sections 112.144, 112.145, and 112.147 (21 CFR 112.144, 112.145, and 112. 147) require testing for sprouts. We estimate that 126 recordkeepers will maintain records for these tests. Thus, it is estimated that for about 246 (245.660) records each recordkeeper will spend an average of 0.825 hour per record on testing sprouts. Therefore, 126 recordkeepers × 245.660 records × 0.825 average hours per recordkeeping = 25,536.357 hours (rounded to 25,536) to meet the recordkeeping requirements of §§ 112.144, 112.145, and 112.147.

We estimate that there are 126 recordkeepers for other records related to sprouts. Thus, it is estimated that for about 62 (62.061) records each recordkeeper will spend an average of 1.412 hours per record. Therefore, 126 recordkeepers × 62.061 records × 1.412 average hours per recordkeeping = 11,041.397 (rounded to 11,041) hours for the burden to maintain records related to sprouts.

We estimate 126 recordkeepers will utilize the recommendations in the draft guidance document entitled ''Compliance with and Recommendations for Implementation of the Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption for Sprout Operations,'' once finalized, to maintain additional records related to sprouts. We estimate each recordkeeper will keep 233 records and recordkeeping will take about an hour per record for a recordkeeping burden of 29,358 hours.

Section 112.2 relates to documentation supporting compliance. We estimate that there are 4,568 recordkeepers each maintaining a record of compliance. We estimate that each recordkeeper will spend 0.079 hour maintaining their record. Therefore, 4,568 recordkeepers × 0.079 hour = 360.872 (rounded to 361) hours for the burden to maintain documentation supporting compliance.

Sections 112.2, 112.6, 112.31, 112.33, and 112.142 (21 CFR 112.2, 112.6, 112.31, 112.33, and 112.142) require third-party disclosures. We estimate that 77,165 respondents are making these disclosures. Thus, it is estimated that each respondent has around three (3.459) disclosures and will spend an average of 1.422 hours per disclosure. Therefore, 77,165 respondents × 3.459 disclosures × 1.422 average hours per disclosure = 379,551.331 hours (rounded to 379,551) for the third-party disclosure burden to meet the requirements of §§ 112.2, 112.6, 112.31, 112.33, and 112.142.

The burden estimate reflects adjustments resulting in an overall increase of 8,515 hours. Although we removed the one-time burden that has been realized since establishing the regulations, we have added burden attributed to recommendations found in the Sprouts draft guidance.

Dated: June 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12108 Filed 6–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4735]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) 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 July 10, 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 0910–0734. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act

OMB Control Number 0910–0734—Extension

Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(o)(4)) authorizes FDA to require and, if necessary, order labeling changes if FDA becomes aware of new safety information that it believes should be included in the labeling of certain prescription drug and biological products approved under section 505 of the FD&C Act or section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262). Section 505(o)(4) of the FD&C Act applies to prescription drug products with an approved new drug application (NDA) under section 505(b) of the FD&C Act, biological products with an approved biologics license application under section 351 of the PHS Act, or prescription drug products with an approved abbreviated new drug application under section 505(j) of the FD&C Act if the reference listed drug with an approved NDA is not currently marketed. Section 505(o)(4) establishes time frames by which application holders must submit, and FDA staff must review, information necessary to ensure timely and appropriate labeling changes. To communicate how we implement these provisions we developed the guidance entitled ''Guidance for Industry: Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act,'' which provides instruction on: (1) A description of the types of safety labeling changes that ordinarily might be required; (2) how FDA plans to determine what constitutes new safety information; (3) the procedures involved in requiring safety labeling changes, and (4) enforcement of the requirements for safety labeling changes. The guidance is currently posted to the docket and available on FDA's website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/safety-labeling-changes-implementation-section-505o4-federal-food-drug-and-cosmetic-act.*

As explained in the guidance, we send application holders a notification letter when safety labeling changes are required. Under section 505(o)(4)(B) of the FD&C Act, the application holder must respond to our notification by either submitting a labeling supplement, or a rebuttal statement explaining why it believes the labeling change is unwarranted. Based on our experience to date with safety labeling changes requirements under section 505(o)(4) of the FD&C Act, we estimate that 36 application holders will elect to submit 1 rebuttal statement each year and that each rebuttal statement will take approximately 6 hours to prepare.

In addition, the guidance explains that labeling prepared in response to a safety labeling change notification should be available on the application holder's website within 10 calendar days of approval. We estimate that 351 application holders will post new labeling one time each year in response to a safety labeling change notification and that the posting of the labeling will take approximately 4 hours to prepare.

In the **Federal Register** of February 12, 2019 (84 FR 3461), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received. The comment offered general support for the information collection, provided certain statistical details regarding potential respondents, encouraged utilization of electronic and/or digital technology where possible, and offered a related topic for which additional guidance might be useful. We appreciate the comment and will continue to consider the suggestions provided. At the same time, it was not suggested that we make changes to our burden estimate, which remains as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Rebuttal statement	36	1	36	6	216

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Type of submission	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Posting approval labeling on application holder's website	351	1	351	4	1,404

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Since last OMB review and approval, we have adjusted our estimated annual number of respondents downward by 62. The decrease reflects that we have issued fewer safety labeling notifications, and thus fewer postings

are required and fewer rebuttals are expected.

Dated: June 3, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12109 Filed 6–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0001]

Leveraging Randomized Clinical Trials To Generate Real-World Evidence for Regulatory Purposes; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public workshop entitled ''Leveraging Randomized Clinical Trials to Generate Real-World Evidence for Regulatory Purposes.'' Convened by Duke University's Robert J. Margolis, MD, Center for Health Policy (Duke Margolis) and supported by a cooperative agreement with FDA, the purpose of the public workshop is to bring the stakeholder community together to explore key considerations for using randomized designs, such as large simple trials or those that incorporate pragmatic elements to generate real-world evidence (RWE).

DATES: The public workshop will be held on July 11, 2019, from 8:30 a.m. to 5 p.m., Eastern Time and July 12, 2019, from 9 a.m. to 1 p.m., Eastern Time. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public workshop will be held at The Westin City Center, 1400 M St. NW, Washington, DC 20005. For additional travel and hotel information, please refer to the following website: *https://healthpolicy.duke.edu/events/leveraging-randomized-clinical-trials-and-real-world-data-generate-real-world-evidence*. There will also be a live webcast for those unable to attend the meeting in person (see *Streaming Webcast of the Public Workshop*).

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993, 301–796–2500, *Dianne.Paraoan@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 3022 of the 21st Century Cures Act (Cures Act) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to add section 505F, *Utilizing real world evidence* (21 U.S.C. 355g). This section requires the establishment of a program to evaluate the potential use of RWE to help support the approval of a new indication for a drug approved under section 505(c) of the FD&C Act (21 U.S.C. 355(c)) and to help to support or satisfy postapproval study requirements. In December 2018, FDA published the Framework for the RWE program (*https://www.fda.gov/media/120060/download*). To inform FDA's RWE Framework, on September 13, 2017, through its cooperative agreement with Duke Margolis, FDA convened a public meeting that explored the use of RWE for regulatory decisions.

The RWE Framework includes information describing sources of RWE, gaps in data collection activities, standards and methodologies for collecting and analyzing RWE, and priority areas, remaining challenges, and potential pilot opportunities to address the overarching Cures Act requirements. The RWE Framework also discusses the integration of clinical trials into clinical care settings and FDA's intent to issue guidance on this subject. The public workshop announced in this notice is a part of FDA's ongoing efforts to implement the RWE Framework by exploring the utility of RWE for regulatory decision making. This workshop will focus on how randomized clinical trial designs can use real-world data (RWD) to generate RWE, particularly in clinical care settings.

II. Topics for Discussion at the Public Workshop

This workshop will explore key considerations for using randomized clinical trial designs and RWD to generate RWE, particularly in clinical care settings. Considerations for discussion include: (1) Selection of interventions appropriate in clinical care settings, (2) study design elements and study populations, (3) capturing outcomes in clinical care settings, and (4) addressing potential challenges around blinding, randomization, and bias. The workshop will also explore regulatory considerations for randomized clinical trials using RWD, such as safety and product monitoring and maintaining data integrity.

III. Participating in the Public Workshop

Registration: To register for the public workshop, please visit the following website: *https://healthpolicy.duke.edu/events/leveraging-randomized-clinical-trials-and-real-world-data-generate-real-world-evidence*. There will be no onsite registration. Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Registration is free and based on space availability, with priority given to early registrants. Persons interested in attending this public workshop must register by July 10, 2019, 11:59 p.m. Eastern Time. Early registration is recommended because seating is limited; therefore, FDA may limit the number of participants from each organization. Registrants will receive confirmation when they have been registered. We will let registrants know if registration closes before the day of the public workshop.

If you need special accommodations due to a disability, please contact Sarah Supsiri at the Duke-Margolis Center for Health Policy (phone: 202–791–9561, email: *sarah.supsiri@duke.edu*) no later than July 5, 2019.

Streaming Webcast of the Public Workshop: This public workshop will also be webcast, and archived video footage will be available at the Duke-Margolis website (*https://healthpolicy.duke.edu/events/leveraging-randomized-clinical-trials-and-real-world-data-generate-real-world-evidence*) following the workshop. Persons interested in viewing the live webcast are encouraged to register in advance (see *Registration*). Organizations are requested to register all participants, but to view using one connection per location whenever possible. Webcast participants will be sent technical system requirements in advance of the event. Prior to joining the streaming webcast of the public workshop, it is recommended that you review these technical system requirements. FDA has verified the website addresses in this document, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

Meeting Materials: All event materials will be provided to registered attendees via email prior to the workshop and publicly available at the Duke-Margolis website (*https://healthpolicy.duke.edu/events/leveraging-randomized-clinical-trials-and-real-world-data-generate-real-world-evidence*).

Transcripts: Transcripts of the public workshop will not be available.

Dated: June 4, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12113 Filed 6–7–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request: 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before July 10, 2019.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 795–7714. When submitting comments or requesting information, please include the document identifier 0990–New–30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: State-Level Paid Family Leave Policy Project.

Type of Collection: New.

0990–NEW—Office of the Secretary/ Office on Women's Health (OWH)

Abstract: The Department of Health and Human Services (DHHS) Office on Women's Health (OWH) ''provides national leadership and coordination to improve the health of women and girls through policy, education, and innovative programs.'' Through the State-Level Paid Family Leave Policy Project, OWH will explore the relationship between women's health and state-level paid family leave (PFL) programs, which provide partial wage replacement to eligible employees to bond with a new child. The project aims to increase awareness of women's health effects in relation to state-level PFL programs among key stakeholders, including advocates, state and federal policymakers, and state program administrators. This information will be used to inform the national conversation about these programs.

The State-Level Paid Family Leave Policy Project involves the collection of information on new mothers' health, health behaviors, and ability to fulfill their roles in the workplace, family and community. Data will be collected through 16 one-time focus groups in the four states with fully functioning state-level PFL programs (California, New Jersey, Rhode Island, and New York) with both women who used and women who did not use the program. A questionnaire will be administered prior to the focus groups to collect information on participants' demographic characteristics and other external factors that may affect health. Data collection and analysis will take approximately one year.

Interested individuals will be screened for eligibility. Participants must be mothers with a child under the age of one and be eligible for their state's respective PFL program. To participate as a state-level PFL user, mothers must have used the entire state-level PFL benefit. To participate as a state-level PFL non-user, mothers must have a baby older than the ''state-level PFL threshold'' and have not taken any state-level PFL. We define the threshold as the time after which mothers are typically out of the temporary disability insurance (TDI) and state-level PFL window (approximately 12 weeks).

ANNUALIZED BURDEN HOUR TABLE

Forms	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (within hours)	Total burden hours
Focus group screener	Interested Individuals	384	1	15/60	96
Demographic questionnaire	Focus group participants	96	1	15/60	24
Focus group protocol	Focus group participants	96	1	1.25	120
Total					240

Terry Clark,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2019–12098 Filed 6–7–19; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health Special Emphasis Panel; NCCIH Training, Fellowship, and Career Development Review Panel (CT).

Date: July 19th, 2019.
Time: 1:30 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jessica Marie McKlveen, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *jessica.mcklveen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: June 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12069 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee, Translational Research Strategy Subcommittee, June 19, 2019, 10 a.m. to 11 a.m. which was published in the **Federal Register** on May 24, 2019, 84 FR 24166.

This meeting notice is amended to change the meeting date and time of the Translational Research Strategy Subcommittee from June 19, 2019 from 10 a.m. to 11 a.m. to July 8, 2019 from 4 p.m. to 5 p.m. The meeting is open to the public.

Dated: June 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12070 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Program Project Grant Special Emphasis Panel.
Date: June 26, 2019.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *Kozelp@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12106 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.
Date: June 24, 2019.
Time: 10:30 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 4, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12105 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Integrative Health

Special Emphasis Panel; NCCIH Training and Education Review Panel (CT).

Date: July 19th, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jessica Marie McKlveen, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892, *jessica.mcklveen@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: June 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12075 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Simian Vaccine Evaluation Units (N01).

Date: July 8–9, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Cynthia Louise De La Fuente, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823 Rockville, MD 20852, 240–669–2740, *delafuentecl@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Leadership Group for an Infectious Diseases Clinical Research Consortium (IDCRC) (UM1 Clinical Trial Required).

Date: July 12, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, NIAID/NIH/DHHS, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 4, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12071 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Child Health and Human Development Special Emphasis Panel, July 18, 2019, 08:00 a.m. to July 18, 2019, 05:00 p.m., Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 which was published in the **Federal Register** on May 13, 2019, 84 FR 20901.

The meeting, ZHD1 DSR Z 50, will be a two-day meeting, July 17–18, 08:00 a.m. to 05:00 p.m. The meeting is closed to the public.

Dated: June 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12073 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Developmental Biology Subcommittee.

Date: June 21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, DHHS, 6710B Rockledge Drive, Bethesda, MD 20817, 301–435–6878, *wedeenc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 4, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12072 Filed 6–7–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency?

[Docket ID FEMA–2019–0002; Internal Agency Docket No. FEMA–B–1935]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Alabama:						
Lee	City of Opelika (18–04–5478P).	The Honorable Gary Fuller, Mayor, City of Opelika, 204 South 7th Street, Opelika, AL 36803.	Engineering Department, 700 Fox Trail, Opelika, AL 36803.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 7, 2019	010145
Lee	Unincorporated areas of Lee County (18–04–5478P).	The Honorable Bill English, Chairman, Lee County Board of Commissioners, P.O. Box 666, Opelika, AL 36803.	Lee County Building Department, 100 Orr Avenue, Opelika, AL 36801.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 7, 2019	010250
California: Santa Barbara.	Unincorporated areas of Santa Barbara County (18–09–1861P).	The Honorable Steve Lavagnino, Chairman, Santa Barbara County Board of Supervisors, 511 East Lakeside Parkway, Santa Barbara, CA 93454.	Santa Barbara County Public Works Department, 130 East Victoria Street, Suite 200, Santa Barbara, CA 93101.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 5, 2019	060331

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Colorado:						
Arapahoe	City of Cherry Hills Village (19–08–0093P).	The Honorable Russell Stewart, Mayor, City of Cherry Hills Village, 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.	Community Development Department, 2450 East Quincy Avenue, Cherry Hills Village, CO 80113.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2019	080013
Douglas	Town of Parker (19–08–0222P).	The Honorable Mike Waid, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	Public Works Department, 20120 East Main Street, Parker, CO 80138.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 6, 2019	080310
Routt	City of Steamboat Springs (18–08–0922P).	Mr. Gary Suiter, Manager, City of Steamboat Springs, P.O. Box 775088, Steamboat Springs, CO 80477.	Planning and Community Development Department, 124 10th Street, Steamboat Springs, CO 80477.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 29, 2019	080159
Connecticut: New Haven.	Town of Guilford (18–01–1576P).	The Honorable Matthew T. Hoey, III, First Selectman, Town of Guilford Board of Selectmen, 31 Park Street, Guilford, CT 06437.	Building and Engineering Department, 50 Boston Street, Guilford, CT 06437.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 2, 2019	090077
Florida:						
Monroe	City of Marathon (19–04–2110P).	The Honorable John Bartus, Mayor, City of Marathon, 9805 Overseas Highway, Marathon, FL 33050.	Planning Department, 9805 Overseas Highway, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 22, 2019	120681
Monroe	Unincorporated areas of Monroe County (19–04–2123P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 3, 2019	125129
Monroe	Unincorporated areas of Monroe County (19–04–2180P).	The Honorable Sylvia Murphy, Mayor, Monroe County Board of Commissioners, 102050 Overseas Highway, Suite 234, Key Largo, FL 33037.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 26, 2019	125129
Orange	City of Orlando (18–04–5643P).	The Honorable Buddy W. Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, FL 32802.	Public Works Department, Engineering Division, 400 South Orange Avenue, 8th Floor, Orlando, FL 32801.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 27, 2019	120186
Osceola	Unincorporated areas of Osceola County (18–04–7431P).	The Honorable Cheryl Grieb, Chair, Osceola County Board of Commissioners, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Stormwater Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 30, 2019	120189
Palm Beach	Unincorporated areas of Palm Beach County (19–04–2277P).	The Honorable Mack Bernard, Mayor, Palm Beach County, 360 South County Road, Palm Beach, FL 33480.	Palm Beach County Planning, Zoning and Building Department, 2300 North Jog Road, West Palm Beach, FL 33411.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 10, 2019	120192
Pasco	Unincorporated areas of Pasco County (19–04–0817P).	The Honorable Ron Oakley, Chairman, Pasco County Board of Commissioners, 8731 Citizens Drive, New Port Richey, FL 34654.	Pasco County Central Permitting Department, 8731 Citizens Drive, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 3, 2019	120230
Polk	Unincorporated areas of Polk County (18–04–1711P).	The Honorable George Lindsey III, Chairman, Polk County Board of Commissioners, P.O. Box 9005, Drawer BC01, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33830.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 5, 2019	120261
Georgia:						
Liberty	City of Flemington (19–04–0357P).	The Honorable Paul Hawkins, Mayor, City of Flemington, 156 Old Sunbury Road, Flemington, GA 31313.	Liberty Consolidated Planning Commission, 100 Main Street, Suite 7520, Hinesville, GA 31313.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 18, 2019	130124

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Liberty	Unincorporated areas of Liberty County (19–04–0357P).	The Honorable Donald Lovette, Chairman, Liberty County Board of Commissioners, 112 North Main Street, Hinesville, GA 31313.	Liberty County Building and Licensing Department, 112 North Main Street, Hinesville, GA 31313.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 18, 2019	130123
Montana:						
Fergus	City of Lewistown (18–08–1160P).	Ms. Holly Phelps, Manager, City of Lewistown, 305 West Watson Street, Suite 3, Lewistown, MT 59457.	Planning/Community Development Department, 305 West Watson Street, Suite 3, Lewistown, MT 59457.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 26, 2019	300022
Fergus	Unincorporated areas of Fergus County (18–08–1160P).	The Honorable Ross Butcher, Presiding Officer/Commissioner, Fergus County Board of Commissioners, 712 West Main Street, Suite 210, Lewistown, MT 59457.	Fergus County Planning Department, 712 West Main Street, Suite 101, Lewistown, MT 59457.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 26, 2019	300019
North Carolina:						
Edgecombe	Town of Tarboro (18–04–0633P).	The Honorable Joe W. Pitt, Mayor, Town of Tarboro, 500 Main Street, Tarboro, NC 27886.	Planning Department, 500 Main Street, Tarboro, NC 27886.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 5, 2019	370094
Edgecombe	Unincorporated areas of Edgecombe County (18–04–0633P).	The Honorable Leonard Wiggins, Chairman, Edgecombe County Board of Commissioners, 201 Saint Andrew Street, Tarboro, NC 27886.	Edgecombe County Planning Department, 201 Saint Andrew Street, Tarboro, NC 27886.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 5, 2019	370087
North Dakota:						
McHenry	City of Velva (18–08–0850P).	The Honorable Jennifer Soli, Mayor, City of Velva, P.O. Box 219, Velva, ND 58790.	City Hall, 101 1st Street West, Velva, ND 58790.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2019	380051
McHenry	Township of Velva (18–08–0850P).	The Honorable James Hystad, Chairman, Township of Velva, 1920 47th Street North, Velva, ND 58790.	Township Hall, 4725 19th Avenue North, Velva, ND 58790.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 16, 2019	380310
Pennsylvania: Chester.	Township of West Whiteland (18–03–2192P).	Ms. Mimi Gleason, Manager, Township of West Whiteland, 101 Commerce Drive, Exton, PA 19341.	Township Hall, 101 Commerce Drive, Exton, PA 19341.	https://msc.fema.gov/portal/advanceSearch.	Sep. 5, 2019	420295
South Carolina:						
Charleston	Town of Sullivan's Island (19–04–1973P).	The Honorable Patrick M. O'Neil, Mayor, Town of Sullivan's Island, P.O. Box 427, Sullivan's Island, SC 29482.	Building Department, 2056 Middle Street, Sullivan's Island, SC 29482.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 28, 2019	455418
Lexington	Unincorporated areas of Lexington County (18–04–3635P).	The Honorable Scott Whetstone, Chairman, Lexington County Council, 212 South Lake Drive, Suite 601, Lexington, SC 29072.	Lexington County Administration Building, 212 South Lake Drive, Suite 401, Lexington, SC 29072.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 30, 2019	450129
Texas:						
Atascosa	City of Pleasanton (19–06–0007P).	The Honorable Travis Hall, Jr., Mayor, City of Pleasanton, P.O. Box 209, Pleasanton, TX 78064.	Public Works Department, 740 East Hunt Street, Pleasanton, TX 78064.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 8, 2019	480015
Bexar	City of San Antonio (18–06–0785P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 29, 2019	480045
Bexar	City of San Antonio (18–06–3896P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 22, 2019	480045

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Bexar	Unincorporated areas of Bexar County (18–06–2879P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 22, 2019	480035
Bexar	Unincorporated areas of Bexar County (18–06–3896P).	The Honorable Nelson W. Wolff, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad Street, Suite 420, San Antonio, TX 78207.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 22, 2019	480035
Collin	City of Plano (18–06–3629P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Suite 300, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Suite 250, Plano, TX 75074.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 23, 2019	480140
Collin	City of Plano (18–06–3759P).	The Honorable Harry LaRosiliere, Mayor, City of Plano, 1520 K Avenue, Suite 300, Plano, TX 75074.	Engineering Department, 1520 K Avenue, Suite 250, Plano, TX 75074.	https://msc.fema.gov/portal/advanceSearch.	Aug. 30, 2019	480140
Comal	City of New Braunfels (18–06–1899P).	The Honorable Barron Casteel, Mayor, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 5, 2019	485493
Hays	City of Kyle (18–06–3039P).	Mr. Scott Sellers, Manager, City of Kyle, 100 West Center Street, Kyle, TX 78640.	City Hall, 100 West Center Street, Kyle, TX 78640.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 25, 2019	481108
Kaufman	City of Forney (18–06–3890P).	Mr. Tony Carson, Manager, City of Forney, 101 East Main Street, Forney, TX 75126.	Engineering Department, 101 East Main Street, Forney, TX 75126.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 30, 2019	480410
Smith	City of Tyler (18–06–3790P).	The Honorable Martin Heines, Mayor, City of Tyler, P.O. Box 2039, Tyler, TX 75710.	Development Center, 423 West Ferguson Street, Tyler, TX 75710.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 3, 2019	480571
Smith	City of Tyler (19–06–0647P).	The Honorable Martin Heines, Mayor, City of Tyler, P.O. Box 2039, Tyler, TX 75710.	Development Center, 423 West Ferguson Street, Tyler, TX 75710.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 3, 2019	480571
Smith	Unincorporated areas of Smith County (18–06–3790P).	The Honorable Nathaniel Moran, Smith County Judge, 200 East Ferguson Street, Suite 100, Tyler, TX 75702.	Smith County Road and Bridge Department, 1700 West Claude Street, Tyler, TX 75702.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 3, 2019	481185
Tarrant	City of Fort Worth (18–06–2091P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 200 Texas Street, Fort Worth, TX 76102.	City Hall, 200 Texas Street, Fort Worth, TX 76102.	*https://msc.fema.gov/portal/advanceSearch.*	Jul. 5, 2019	480596
Tarrant	City of Grand Prairie (19–06–0321P).	The Honorable Ron Jensen, Mayor, City of Grand Prairie, P.O. Box 534045, Grand Prairie, TX 75053.	Development Center, 206 West Church Street, Grand Prairie, TX 75050.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 3, 2019	485472

[FR Doc. 2019–11938 Filed 6–7–19; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7011–N–23]

30-Day Notice of Proposed Information Collection: Previous Participation Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 10, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection

described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on February 27, 2019 at 84 FR 6436.

A. Overview of Information Collection

Title of Information Collection: Previous Participation Certification.

OMB Approval Number: 2502–0118.

Type of Request: Revision of a currently approved collection.

Form Number: HUD 2530.

Description of the need for the information and proposed use: The HUD–2530 process provides review and clearance for participants in HUD's multifamily insured and non-insured projects. The information collected (participants' previous participation record) is reviewed to determine if they have carried out their past financial, legal, and administrative obligations in a satisfactory and timely manner. The HUD–2530 process requires a principal to certify to their prior participation in multifamily projects, and to disclose other information which could affect the approval for the proposed participation.

Respondents: Multifamily projects participants such as owners, managers, developers, consultants, general contractors and nursing home owners and operators.

Estimated Number of Respondents: 9,000.

Estimated Number of Responses: 9,000.

Frequency of Response: 1.

Average Hours per Response: Three hours for paper 2530 and 1 hour for electric 2530.

Total Estimated Burdens: 12,000.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: May 29, 2019.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2019–12158 Filed 6–7–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6113–N–03]

Announcement of Funding Awards

AGENCY: Office of Strategic Planning and Management, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in competitions for funding under the Notices of Funding Availability (NOFAs) for the following programs: Fiscal Year (FY) 2015 Violence Against Women Act (VAWA) and Housing Opportunities for Persons With AIDS (HOPWA) Project Demonstration; FY 2013 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) renewal grants; FY 2014 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) renewal grants; FY 2015 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants; FY 2016 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants; FY 2017 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants; and FY 2018 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants; FY 2017 Self Help Homeownership Opportunity; FY 2017 Continuum of Care Program Competition; and FY 2017 Research and Evaluation, Demonstrations and Data Analysis and Utilization Program (HUDRD).

FOR FURTHER INFORMATION CONTACT: Office of Strategic Planning and Management, Grants Management and Oversight Division at *AskGMO@hud.gov* or the contact person listed in each appendix.

SUPPLEMENTARY INFORMATION: The FY 2015 Violence Against Women Act (VAWA) and Housing Opportunities for Persons With AIDS (HOPWA) Project Demonstration competition was announced in the NOFA published on *grants.gov* on January 4, 2016 (FR–5900–N–11B) and which closed on March 8, 2016. Applications were rated and selected for funding based on selection criteria contained in the NOFA. HUD awarded $9,220,280 to 16 recipients to improve cross-agency planning, resource utilization, and service integration among HIV/AIDS housing providers and sexual assault, domestic violence, dating violence, and stalking service providers. Grantees provide housing assistance and supportive services to low-income persons living with HIV/AIDS who are homeless, or in need of transitional housing or other housing assistance as a result of sexual assault, domestic violence, dating violence, or stalking, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient.

The FY 2013 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) renewal grants was announced on December 20, 2012 as Memorandum to eligible applicants and which closed on January 29, 2013. HUD awarded $32,336,685 to 30 recipients pursuant to the authority provided by the Continuing Appropriations Act, 2013 (Pub. L. 112–175, approved September 14, 2012), and successor authority for FY 2013. The Department renewed all eligible expiring HOPWA competitive grants that provide permanent supportive housing (PSH) and meet applicable program requirements.

The FY 2014 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) renewal grants was announced on January 31, 2014 as a Memorandum to eligible applicants and which closed on March 14, 2014. HUD awarded $29,066,748 to 26 recipients pursuant to the authority provided by the Consolidated Appropriations Act of 2014, continuing resolution, and/or appropriations act. The Department renewed all eligible expiring HOPWA permanent supportive housing (PSH) competitive grants that met applicable program requirements.

The FY 2015 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants was announced on January 20, 2015, Notice CPD–15–01,

and which closed on March 13, 2015. HUD awarded $29,270,455 to 25 recipients pursuant to the authority provided by the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113–235, approved December 16, 2014). The Department renewed all eligible expiring HOPWA permanent supportive housing (PSH) competitive grants initially funded with appropriated funds from FY 2010 or earlier that met applicable program requirements.

The FY 2016 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants was announced on March 21, 2016, Notice CPD–16–03, and which closed on April 15, 2016. HUD awarded $24,005,214 to 25 recipients pursuant to the authority provided by the Consolidated Appropriations Act, 2016, (Pub. L. 114–113, approved December 8, 2015). The Department renewed all eligible expiring HOPWA permanent supportive housing competitive grants initially funded with appropriated funds from FY 2010 or earlier that met applicable program requirements.

The FY 2017 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants was announced on February 16, 2017, Notice CPD–16–02, and which closed on March 31, 2017. HUD awarded $37,733,248 to 32 recipients pursuant to the authority provided by the Consolidated Appropriations Act, 2017, (Pub. L. 115–31, approved May 5, 2017). The Department renewed all eligible expiring HOPWA permanent supportive housing competitive grants initially funded with appropriated funds from FY 2010 or earlier that met applicable program requirements.

The FY 2018 Housing Opportunities for Persons with AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants was announced on May 9, 2018, Notice CPD–18–07, and which closed on June 11, 2018. HUD awarded $23,811,493 to 22 recipients pursuant to the authority provided by the Department of Housing and Urban Development Appropriations Act, 2018 (Pub. L. 115–141, Div. L, Title II, approved March 23, 2018). The Department renewed all eligible expiring HOPWA permanent supportive housing (PSH) competitive grants initially funded with appropriated funds from FY 2010 or earlier provided they meet applicable program requirements.

HUD announced the FY 2017 Self-Help Homeownership Opportunity competition in the NOFA published on *grants.gov* on October 25, 2017 (FR–6100–N–19). HUD rated and selected applications for funding based on selection criteria contained in the NOFA. HUD awarded $10,000,000 to 4 recipients to facilitate and encourage innovative homeownership opportunities on a national and geographically-diverse basis. The program supports self-help housing programs that require a significant amount of sweat equity by the homebuyer toward the construction or rehabilitation of his or her home.

HUD announced the FY 2017 Continuum of Care Program competition in the NOFA published on *grants.gov* on September 28, 2018 (FR–6100–N–25). HUD rated and selected applications for funding based on selection criteria contained in the NOFA. HUD awarded $19,519,1040 to 69 recipients for the Continuum of Care program that awarded $2 billion to projects that house persons experiencing homelessness throughout the country.

HUD announced the FY 2017 Research and Evaluation, Demonstrations and Data Analysis and Utilization Program (HUDRD) competition in the NOFA published on *grants.gov* on August 15, 2017 (FR–6100–N–29). HUD rated and selected applications for funding based on selection criteria contained in the NOFA. HUD awarded $890,661 to 3 recipients for both projects described in the NOFA. Project 1, Child Trajectories in HUD-Assisted Housing, sought to understand childhood trajectories of children and youth residing in HUD-assisted housing by comparing differences in trajectories among HUD-assisted children (*e.g.,* compare HUD-assisted children who had few adverse childhood events and HUD-assisted children who had many adverse childhood experiences), or comparing differences in trajectories among HUD-assisted children and youth with one or more non-HUD cohorts. Project 2, the Social and Economic Impacts of the Community Development Block Grant Program, sought to develop a better understanding of the effects of specific Community Development Block Grant (CDBG) eligible activities. Through this project, HUD seeks to identify objective, quantifiable outcome measures that can be attributed to specific CDBG activities in order to inform policymakers at the federal, state, and local levels.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545(a)(4)(C)), the Department is publishing the awardees and the amounts of the awards in the Appendices A–J to this document.

Dated: May 22, 2019.

Chris Walsh,

Director, Grants Management and Oversight.

Appendix A

FY2015 FY 2015 Violence Against Women Act (VAWA) and Housing Opportunities for Persons With AIDS (HOPWA) Project Demonstration

Contact: Lisa Steinhauer, 215–861–7651.

Award No.	Organization	Address	City	State	Zip code	Award amount
CA–H15–0001	City of San Jose Department of Housing.	200 East Santa Clara Street, 12th Floor.	San Jose	CA	95113	$1,089,000
CA–H15–0005	Volunteers of America of Los Angeles.	3600 Wilshire Blvd., Suite 1500.	Los Angeles	CA	90010	1,068,681
DC–H15–0001	District of Columbia Department of Health.	899 North Capitol Street NE, 4th Floor.	Washington	DC	20020	1,100,000
LA–H15–0001	Unity of Greater New Orleans	2475 Canal Street, Suite 300	New Orleans	LA	70119	1,096,850
MO–H15–0001	City of Kansas City, MO	414 E 12th Street, 29th Floor	Kansas City	MO	64106	817,720
NY–H15–0001	Gay Men's Health Crisis, Inc	446 W 33rd Street	New York	NY	10001	1,085,977
NY–H15–0003	Unity House of Troy, Inc	2431 Sixth Avenue	Troy	NY	12180	869,257
OR–H15–0001	Multnomah County Joint Office of Homeless Services.	421 SW Oak Street, Suite 105	Portland	OR	97204	602,795
CA–H15–0002	City of San Jose Department of Housing.	200 East Santa Clara Street, 12th Floor.	San Jose	CA	95113	197,520
CA–H15–0004	Volunteers of America of Los Angeles.	3600 Wilshire Blvd., Suite 1500.	Los Angeles	CA	90010	185,259

Award No.	Organization	Address	City	State	Zip code	Award amount
DC–H15–0002	District of Columbia Department of Health.	899 North Capitol Street NE, 4th Floor.	Washington	DC	20020	197,520
LA–H15–0002	Unity of Greater New Orleans	2475 Canal Street, Suite 300	New Orleans	LA	70119	197,520
MO–H15–0002	City of Kansas City, MO	414 E 12th Street, 29th Floor	Kansas City	MO	64106	191,520
NY–H15–0002	Gay Men's Health Crisis, Inc	446 W 33rd Street	New York	NY	10001	197,520
NY–H15–0004	Unity House of Troy, Inc	2431 Sixth Avenue	Troy	NY	12180	197,519
OR–H15–0002	Multnomah County Joint Office of Homeless Services.	421 SW Oak Street, Suite 105	Portland	OR	97204	125,622
Total						9,220,280

Appendix B

FY2013 Housing Opportunities for Persons With AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants

Contact: Lisa Steinhauer, 215–861–7651.

Grant No.	Organization name	Address	City	State	Zip code	Award amount
AL–H130012	Health Services Center, Inc	608 Martin Luther King, Jr. Drive.	Anniston	AL	36202	$855,617
AL–H130024	AIDS Alabama	3521 7th Avenue South	Birmingham	AL	35222	905,893
AZ–H130015	Pima County	2797 East Ajo Way	Tucson	AZ	85713	1,385,585
CA–H130005	City of San Jose	200 E Santa Clara Street	San Jose	CA	95113	1,309,810
CA–H130013	San Francisco Mayor's Office of Housing.	1 South Van Ness Avenue, 5th Floor.	San Francisco	CA	94103	1,461,622
CA–H130025	Housing Services Affiliate—Bernal Heights Neighborhood Center.	515 Cortland Avenue	San Francisco	CA	94110	526,667
DE–H130016	Delaware HIV Consortium	100 W 10th Street, Suite 415	Wilmington	DE	19801	793,213
FL–H130017	I.M. Sulzbacher	611 East Adams Street	Jacksonville	FL	32202–2847	1,215,572
FL–H130026	City of Key West	1400 Kennedy Drive	Key West	FL	33040	1,464,404
GA–H130028	City of Savannah, Project House Call.	Bull & Bay Street	Savannah	GA	31402–1027	703,089
GA–H130029	City of Savannah, Daniel-Flagg Villas.	Bull & Bay Street	Savannah	GA	31402–1027	289,382
IL–H130002	University of Illinois, College of Medicine.	909 S Marshfield Avenue	Chicago	IL	60612–7205	1,252,469
IL–H130027	Cornerstone Services, Inc	777 Joyce Road	Joliet	IL	60436	954,716
KY–H130007	Kentucky Housing Corporation	1231 Louisville Road	Frankfort	KY	40601–6156	475,046
LA–H130018	Unity of Greater New Orleans	2475 Canal Street, Suite 300	New Orleans	LA	70119	840,903
MA–H130019	Justice Resource Institute	160 Gould Street, Suite 300	Needham	MA	02494–2300	1,437,212
MA–H130030	Action, Inc	180 Main Street	Gloucester	MA	01930	1,284,452
MD–H130010	Health Care for Homeless, Inc	421 Fallsway	Baltimore	MD	21202	1,297,808
MN–H130003	Clare Housing	929 Central Avenue NE	Minneapolis	MN	55413	986,114
NJ–H130006	New Jersey Department of Health.	50 East State Street, 3rd Floor	Trenton	NJ	08625–0363	1,328,365
NM–H130031	Santa Fe Community Housing Trust.	P.O. Box 713	Santa Fe	NM	87504–0713	1,324,438
NY–H130004	The Fortune Society	2976 Northern Boulevard	Long Island City	NY	11101	1,180,129
OR–H130008	Our House of Portland	2727 SE Alder Street	Portland	OR	97214	1,050,849
OR–H130020	Oregon State Department of Human Services, Behavioral Health Program.	800 NE Oregon Street, Suite 1105.	Portland	OR	97232	1,215,218
OR–H130021	Oregon State Department of Human Services, Re-entry Program.	801 NE Oregon Street, Suite 1105.	Portland	OR	97232	1,364,352
PA–H130022	Asociacion De Puertorriquenos en Marcha, Inc.	4301 Rising Sun Avenue	Philadelphia	PA	19140	1,371,215
RI–H130014	Rhode Island Housing Mortgage Finance Corporation (Sunrise Project).	44 Washington Street	Providence	RI	02903	1,276,243
RI–H130023	Rhode Island Housing Mortgage Finance Corporation (New Transitions).	44 Washington Street	Providence	RI	02903	780,242
WA–H130009	Downtown Emergency Service Center.	515 3rd Avenue	Seattle	WA	98104	636,640
WI–H130032	AIDS Resource Center of Wisconsin.	820 N Plankington Avenue	Milwaukee	WI	53203	1,369,420
Total						32,336,685

Appendix C

FY2014 Housing Opportunities for Persons With AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants

Contact: Lisa Steinhauer, 215–861–7651.

Grant No.	Organization name	Address	City	State	Zip code	Award amount
AK–H140010	Alaska Housing Finance Corporation.	4300 Boniface Parkway	Anchorage	AK	99510	$956,642.00
AL–H140017	AIDS Alabama, Inc	3521 7th Avenue, South	Birmingham	AL	35222–352	978,286.00
AL–H140025	Health Services Center, Inc.	608 MLK Drive	Anniston	AL	36202	926,965.00
AZ–H140014	Cochise County	1415 Melody Lane	Bisbee	AZ	85603	655,584.00
CO–H140001	Del Norte Neighborhood Development Corp.	2926 Zuni Street	Denver	CO	80211	653,579.00
ID–H140005	Idaho Housing and Finance Association.	565 W Myrtle Street	Boise	ID	83702	1,390,268.00
IL–H140002	AIDS Foundation of Chicago.	200 W Jackson Blvd., Suite 2200.	Chicago	IL	60606–6954	1,419,482.00
IL–H140015	AIDS Foundation of Chicago.	200 W Jackson Blvd., Suite 2200.	Chicago	IL	60606–6954	1,423,774.00
KY–H140011	Lexington-Fayette Urban County Government.	200 East Main Street	Lexington	KY	40507–1310	1,437,920.00
MD–H140018	City of Baltimore, DHCD	7 E Redwood	Baltimore	MD	21202	1,424,500.00
MD–H140022	AIDS Interfaith Residential Services, Inc.	1800 North Charles Street	Baltimore	MD	21201	1,380,200.00
MN–H140003	Salvation Army, Harbor Lights.	2445 Prior Avenue	Roseville	MN	55113	483,771.00
MN–H140008	Clare Housing	929 Central Avenue NE	Minneapolis	MN	55413	420,906.00
MS–H140023	Grace House	236 Millsaps Avenue	Jackson	MS	39202	1,221,580.00
MT–H140006	State of Montana	1400 Carter Drive	Helena	MT	59601	1,474,000.00
NH–H140009	Harbor Homes, Inc	45 High Street	Nashua	NH	03060	541,656.00
NH–H140019	State of New Hampshire	129 Pleasant Street	Concord	NH	03301	1,003,767.00
NH–H140026	City of Nashua	229 Main Street	Nashua	NH	03060	1,430,000.00
NY–H140007	Greyston Health Services, Inc.	21 Park Avenue	Yonkers	NY	10703	1,397,518.00
NY–H140020	Bailey House, Inc	7251 Park Avenue	New York	NY	10035	1,366,694.00
TN–H140016	Kingsport Housing and Redevelopment Authority.	906 East Sevier Avenue	Kingsport	TN	37660	1,149,864.00
TX–H140024	Tarrant County Community Development Division.	1509B S University Drive, Suite 276.	Fort Worth	TX	76107	993,216.00
VI–H140004	Methodist Training and Outreach Center, Inc.	4–A Kronprindsens Gade	St. Thomas, Virgin Islands.	VI	00803	1,474,000.00
VT–H140021	Vermont Housing and Conservation Board.	58 East State Street	Montpelier	VT	05602	1,473,017.00
WA–H140012	State of Washington	101 Plum Street	Olympia	WA	98504–2525	1,342,803.00
WY–H140013	Wyoming Department of Health.	6101 Yellowstone Road, Suite 510.	Cheyenne	WY	82009–3445	646,756.00
Total						29,066,748.00

Appendix D

FY2015 Housing Opportunities for Persons With AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants

Contact: Lisa Steinhauer, 215–861–7651.

Grant No.	Organization name	Address	City	State	Zip code	Award amount
AK–H150012	Alaska Hsng Finance Corp	P.O. Box 101020	Anchorage	AK	99510–1020	$781,269.00
CA–H150003	City of Los Angeles	1200 W 7th Street, 9th Floor	Los Angeles	CA	90017	1,501,500.00
CA–H150015	Luthern Social Services of Northern California.	1465 Civic Court, Bldg. D, Suite 810.	Concord	CA	94520	1,276,170.00
CA–H150018	Salvation Army Alegria	180 East Ocean Blvd., Suite 500.	Long Beach	CA	90802–4708	1,062,519.00
DE–H150025	Ministry of Caring, Inc	506 N Church Street	Wilmington	DE	19801–482	790,298.00
HI–H150001	Maui A.I.D.S. Foundation	1935 Main Street, Suite 101	Wailuku	HI	96793–1784	1,441,159.00
HI–H150010	Gregory House Programs	200 N Vineyard Blvd.. Suite A310.	Honolulu	HI	96817	1,390,650.00

Grant No.	Organization name	Address	City	State	Zip code	Award amount
IL–H150013	City of Chicago Public Health Dept.	333 S State Street	Chicago	IL	60604–3946	1,487,815.00
IL–H150016	AIDS Foundation of Chicago	200 W Jackson Blvd, Suite 2100.	Chicago	IL	60641–6954	1,472,777.00
IL–H150017	Chicago House & Social Service Agency, Inc.	1925 N Clybourn, Suite 401	Chicago	IL	60614–4940	1,285,370.00
IL–H150023	Interfaith Residence Dba Doorways.	4385 Maryland Avenue	St. Louis	MO	63106	965,658.00
MA–H150007	Community Healthlink, Inc	72 Jaques Avenue	Worcester	MA	01610–2476	899,274.00
MA–H150021	AIDS Action committee of Mass.	75 Amory Street	Boston	MA	02119–9008	1,415,025.00
MD–H150022	City of Baltimore	7 E Redwood Street, 5th Floor	Baltimore	MD	21202	1,405,950.00
ME–H150004	Frannie Peabody Center	30 Danforth Street, Suite 311	Portland	ME	04101	1,054,799.00
ME–H150008	Frannie Peabody Center	30 Danforth Street, Suite 311	Portland	ME	04101	1,309,169.00
ME–H150019	City of Portland/Frannie Peabody Center.	30 Danforth Street, Suite 311	Portland	ME	04101	1,432,653.00
MI–H150005	Cass Community Social Services, Inc.	11850 Woodrow Wilson	Detroit	MI	48206–1351	1,348,970.00
MO–H150014	Interfaith Residence Dba Doorways.	4385 Maryland Avenue	St. Louis	MO	63106	1,109,912.00
MT–H150006	The MT Department of Public Health and Human Services.	1400 Carter Drive	Helena	MT	59717	1,482,040.00
NH–H150020	State of New Hampshire	129 Pleasant Street	Concord	NH	03301–3852	734,770.00
NY–H150009	Bailey House, Inc	1751 Park Avenue	New York	NY	10035–2831	1,081,922.00
PA–H150002	Calcutta House	1601 W Girard Avenue	Philadelphia	PA	19130–1614	837,303.00
VT–H150011	Burlington Housing Authority	65 Mian Street	Burlington	VT	05401–8408	392,906.00
WI–H150024	AIDS Resource Center of Wisconsin.	820 N Plankinton Avenue	Milwaukee	WI	53203–1802	1,310,577.00
Total						29,270,455.00

Appendix E

FY2016 Housing Opportunities for Persons With AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants

Contact: Lisa Steinhauer, 215–861–7651.

Grant No.	Organization name	Address	City	State	Zip code	Award amount
AL–H160007	Health Services Center, Inc	608 MLK Drive, P.O. Box 1347	Anniston	AL	36202–7344	$855,617
AL–H160016	AIDS Alabama, Inc	3529 7th Avenue South	Birmingham	AL	35222–2222	856,507
CA–H160001	Alameda County	224 W Winton Avenue, Room 108.	Hayward	CA	94544–1215	1,483,094
CA–H160004	City of San Jose	200 E Santa Clara Street	San Jose	CA	95113–1903	1,273,655
CA–H160008	City and County of San Francisco.	Mayor's Office of Housing and Community Development, 1 S Van Ness Avenue, 5th Floor.	San Francisco	CA	94103–1267	1,430,000
CA–H160017	Bernal Heights Housing Corporation.	515 Cortland Avenue	San Francisco	CA	94110–5611	492,883
CO–H160026	Del Norte Neighborhood Development Corporation.	3275 W 14th Avenue #202	Denver	CO	80204–2232	612,379
DE–H160010	Delaware HIV Consortium	100 W 10th Street, Suite 415	Wilmington	DE	19801–1643	757,211
FL–H160013	I.M. Sulzbacher Center for the Homeless, Inc.	611 East Adams Street	Jacksonville	FL	32202–2847	1,215,572
FL–H160018	City of Key West	1400 Kennedy Drive	Key West	FL	33040–4008	1,430,000
GA–H160021	City of Savannah (Daniel Flagg Villas).	Bull & Bay Street, P.O. Box 1027.	Savannah	GA	31402–1027	269,278
GA–H160023	City of Savannah (Project House Call).	Bull & Bay Street, P.O. Box 1027.	Savannah	GA	31402–1027	685,696
IL–H160020	Cornerstone Services, Inc	777 Joyce Road	Joliet	IL	60436–1877	926,244
KY–H160002	Kentucky Housing Corporation	1231 Louisville Road	Frankfort	KY	40601–6156	434,160
LA–H160014	UNITY of Greater New Orleans	2475 Canal Street, Suite 300	New Orleans	LA	70119–6555	804,912
MA–H160011	Justice Resource Institute, Inc	160 Gould Street, Suite 300	Needham	MA	02494–2300	1,405,430
MD–H160006	Health Care for Homeless, Inc	421 Fallsway	Baltimore	MD	21202–4800	1,265,112
MN–H160022	Clare Housing	929 Central Avenue, NE	Minneapolis	MN	55413–3021	951,376
NJ–H160025	New Jersey Department of Health & Senior Services.	50 East State Street, 3rd Floor, P.O. Box 363.	Trenton	NJ	08625–0363	1,295,910
OR–H160003	Our House of Portland	2727 SE Alder Street	Portland	OR	97214–3015	1,016,535
OR–H160012	Oregon Health Authority	800 NE Oregon Street, Suite 1105.	Portland	OR	97232–2187	1,215,218

Grant No.	Organization name	Address	City	State	Zip code	Award amount
RI–H160009	Rhode Island Housing and Mortgage Finance Corporation (Sunrise Project).	44 Washington Street	Providence	RI	02903–1721	1,240,606
RI–H160015	Rhode Island Housing and Mortgage Finance Corporation (New Transitions).	44 Washington Street	Providence	RI	02903–1721	741,355
TX–H160005	City of Dallas	1500 Marilla, 4EN	Dallas	TX	75201–6318	746,853
WA–H160019	Downtown Emergency Service Center.	515 3rd Avenue	Seattle	WA	98104–2304	599,611
Total						24,005,214

Appendix F

FY2017 Housing Opportunities for Persons With AIDS (HOPWA Permanent Supportive Housing (PSH) Renewal Grants

Contact: Lisa Steinhauer, 215–861–7651.

Grant No.	Organization name	Address	City	State	Zip code	Award amount
AL–H170001	AIDS Alabama, Inc	3529 7TH AVE S	BIRMINGHAM	AL	35222–3210	$937,228.00
AZ–H170003	Pima County (AZ)	2797 East Ajo Way	Tucson	AZ	85713	1,353,465.00
IL–H170007	AIDS Foundation of Chicago	200 W Jackson Blvd	Chicago	IL	60606–6944	1,423,648.00
IL–H170004	The Board of Trustees of the University of Illinois.	809 S Marshfield Avenue Urban Health & Diversity Progm.	Chicago	IL	60612–7205	1,252,469.00
MN–H170005	The Salvation Army, Harbor Lights.	2445 Prior Avenue	Roseville	MN	55113	467,299.00
NM–H170002	Santa Fe Community Housing Trust.	P.O. Box 713	Santa Fe	NM	87504	1,314,280.00
VI–H170006	Methodist Training & Outreach Center, Inc.	4–A Kronprindsens Gade	St. Thomas	VI	00803	1,435,614.00
AK–H170008	Alaska Housing Finance Corp	4300 Boniface Parkway	Anchorage	AK	99510	915,442.00
AL–H170009	Health Services Center, Inc	608 Martin Luther King Jr. Drive.	Anniston	AL	36201–7344	885,765.00
AZ–H170025	Cochise County	1415 Melody Lane, Bldg. A	Bisbee	AZ	85603–0000	611,584.00
HI–H170010	Maui A.I.D.S. Foundation	1935 Main Street, Suite 101	Wailuku	HI	96793–1784	1,441,159.00
ID–H170029	Idaho Housing and Finance Association.	565 W Myrtle St., Housing Counseling.	Boise	ID	83707–1899	1,349,185.00
IL–H170030	AIDS FOUNDATION OF CHICAGO.	200 W Jackson Blvd., FL. 21	CHICAGO	IL	60606–6942	1,382,574.00
KY–H170017	Lexington, Fayette Urban County Government.	200 East Main Street	Lexington	KY	40507–1310	1,430,000.00
MA–H170022	Action, Inc	180 MAIN ST., FL. 2	GLOUCESTER	MA	01930–6002	1,284,452.00
MD–H170018	AIDS Interfaith Residential Services, Inc.	1800 N CHARLES ST., STE 700.	BALTIMORE	MD	21201–5992	1,339,000.00
MD–H170031	City of Baltimore, DHCD	7 E Redwood	Baltimore	MD	21202	1,424,500.00
MN–H170019	Clare Housing	929 Central Ave. NE	Minneapolis	MN	55413–2404	420,902.00
MS–H170016	Grace House	236 Millsaps Avenue	Jackson	MS	39202	1,221,580.00
MT–H170014	Montana Dept of Public Health & Human Services.	2401 Colonial Dr	Helena	MT	59604–4909	1,430,000.00
NH–H170012	City of Nashua, NH	229 Main Street, Community Development Division.	Nashua	NH	03060–2938	1,430,000.00
NH–H170011	Harbor Homes, Inc	45 High Street	Nashua	NH	03060	500,457.00
NH–H170020	New Hampshire Department of Health and Human Services.	129 PLEASANT ST	CONCORD	NH	03301–3852	966,900.00
NY–H170023	Greyston Health Services, Inc	21 Park Avenue	Yonkers	NY	10703	1,346,087.00
NY–H170026	The Bailey House, Inc	1751 Park Ave	New York	NY	10035	1,325,494.00
OR–H170015	The Oregon Health Authority	800 NE Oregon Street, Suite 1105.	Portland	OR	97232–2187	1,371,362.00
PA–H170021	Asociacion De Puertorriquenos en Marcha, Inc.	4301 Rising Sun Avenue	Philadelphia	PA	19140	1,339,000.00
TN–H170013	Kingsport Housing & Redevelopment Authority.	906 E Sevier Avenue	Kingsport	TN	37662–0044	1,108,664.00
TX–H170027	Tarrant County Community Development Division.	1509B S University Dr., Suite 276.	Fort Worth	TX	76107	950,966.00
VT–H170028	Vermont Housing and Conservation Board.	58 East State Street	Montpelier	VT	05602–3044	1,433,508.00
WA–H170032	The State of Washington	1011 Plum Street	Olympia	WA	98504–0001	1,301,664.00

Grant No.	Organization name	Address	City	State	Zip code	Award amount
WI–H170024 ..	AIDS Resource Center of Wisconsin.	820 N Plankinton Ave	Milwaukee	WI	53203	1,339,000.00
Total	.....	.....	.....		.....	37,733,248.00

Appendix G

FY2018 Housing Opportunities for Persons With AIDS (HOPWA) Permanent Supportive Housing (PSH) Renewal Grants

Contact: Lisa Steinhauer, 215–861–7651.

Grant No.	Organization name	Address	City	State	Zip code	Award amount
AK–H180009 ..	State of Alaska—Alaska Housing Finance Corporation.	4300 Boniface Parkway	Anchorage	AK	99508–4387	$767,362
CA–H180012 ..	Lutheran Social Services of Northern California.	1465 Civic Court	Concord	CA	00009–4520	1,275,787
CA–H180017 ..	Salvation Army Alegria ..	180 East Ocean Boulevard.	Long Beach	CA	90802–4708	1,062,519
DE–H180020 ..	Ministry of Caring, Inc	115 E 14th Street	Wilmington	DE	19801–3209	790,298
HI–H180007 ...	Gregory House Programs.	200 North Vineyard Blvd	Honolulu	HI	96817–3950	1,390,650
IL–H180010	City of Chicago Public Health Dept.	333 S State Street	Chicago	IL	60604–3946	1,483,352
IL–H180014	AIDS Foundation of Chicago.	200 W Jackson Blvd	Chicago	IL	60606–6944	1,450,980
IL–H180015	Chicago House & Social Service Agency, Inc.	1925 N Clybourn Avenue.	Chicago	IL	60614–4940	1,276,244
IL–H180018	Interfaith Residence Dba Doorways (IL).	4385 Maryland Avenue ..	St. Louis	MO	63108–2703	965,163
MA–H180005	Community Healthlink, Inc.	72 Jaques Avenue	Boston	MA	01610–2476	837,404
MA–H180021	Fenway Community Health Center, Inc.	1340 Boyle St	Worcester	MA	02215–4302	1,394,366
ME–H180004	Frannie Peabody Center (150004).	30 Danforth Street	Portland	ME	04101–4574	1,041,192
ME–H180022	Frannie Peabody Center (ME–H150008).	30 Danforth Street	Portland	ME	04101–4574	1,309,169
MI–H180001 ...	Cass Community Social Services, Inc.	11745 Rosa Parks Blvd	Detroit	MI	48206–1269	1,348,970
MO–H180011	Interfaith Residence Dba Doorways (MO).	4385 Maryland Avenue ..	St. Louis	MO	63108–2703	1,109,357
MT–H180003 ..	State of Montana—MT Department of Public Health & Human Services.	1400 Carter Dr	Helena	MT	59601–6400	1,482,040
NH–H180019 ..	State of New Hampshire	129 Pleasant St	Concord	NH	03301–3852	733,521
NY–H180013 ..	Bailey House, Inc	1751 Park Avenue	New York	NY	10035–2831	1,038,429
PA–H180006 ..	Calcutta House	1601 W Girard Avenue ..	Philadelphia	PA	19130–1614	837,303
VT–H180016 ..	Burlington Housing Authority.	65 Main Street	Burlington	VT	05401–8408	382,494
WI–H180008 ..	AIDS Resource Center of Wisconsin.	820 N Plankinton Ave	Milwaukee	WI	53203–1802	1,261,955
WY–H180002	Wyoming Department of Health.	6101 Yellowstone Road	Cheyenne	WY	82009–3445	572,938
Total	.....	.....	.....		.....	23,811,493.00

Appendix H

FY2017 Self-Help Homeownership Opportunity

Contact: Dr. Jackie L. Williams (202) 708–2290.

Grantee	State	Amount awarded
Housing Assistance Council	DC	$1,104,723.00
Community Frameworks	WA	1,494,903.00
Tierra Del Sol Housing Corporation (Consortium)	NM	2,213,103.00
Habitat for Humanity International, Inc	GA	5,187,271.00
Total		10,000,000

Appendix I

FY2017 Continuum of Care Program Competition

Contact: Ebony Rankin (202) 402–2505.

Org. name	Street address	City	State	Zip code	Award amount
Albergue El Paraiso Corporation	P.O. BOX 11740	Santurce	PR	00910	$301,939
Albergue El Paraiso Corporation	P.O. BOX 11740	Santurce	PR	00910	224,297
Casa Protegida Julia de Burgos	P.O. BOX 362433	San Juan	PR	00936–2433	414,306
Casa Protegida Julia de Burgos	P.O. BOX 362433	San Juan	PR	00936–2433	231,728
Coalicion de Apoyo Continuo a Personas sin Hogar en San Juan.	Corporate Office Park Edificio ASG Suite 302; Calle 20 Bo. Monacillos.	San Juan	PR	00928	579,586
Coalition of Guaynabo	Street 169 Guaynabo Office Center; Bo. Los Frailes.	Guaynabo	PR	00970–7886	206,541
Corporacion La Fondita de Jesus	#704 Monserrate Street	Santurce	PR	00907	790,821
Corporacion La Fondita de Jesus	#704 Monserrate Street	Santurce	PR	00907	301,999
Corporacion La Fondita de Jesus	#704 Monserrate Street	Santurce	PR	00907	670,922
Hogar del Buen Pastor	250 Ave. de la Constitucion; Puerta de Tierra.	San Juan	PR	00901	682,180
Hogar del Buen Pastor	251 Ave. de la Constitucion; Puerta de Tierra.	San Juan	PR	00901	114,953
Hogar Ruth Albergue Para Mujeres Maltratadas.	P.O. Box 538	Vega Alta	PR	00692	410,552
La Perla de Gran Precio	Calle Gautier Benitez #66; Urb. Floral Park.	San Juan	PR	00917	209,033
La Perla de Gran Precio	Calle Gautier Benitez #66; Urb. Floral Park.	San Juan	PR	00918	93,408
La Perla de Gran Precio	Calle Gautier Benitez #66; Urb. Floral Park.	San Juan	PR	00919	322,062
La Perla de Gran Precio	Calle Gautier Benitez #66; Urb. Floral Park.	San Juan	PR	00920	121,351
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	539,142
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	78,555
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	185,603
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	294,000
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	392,418
Programa Guara Bi	P.O. Box 6581	San Juan	PR	00726	199,579
Puerto Rico Department of the Family	Ave. Barbosa 306; P.O. Box 11398	San Juan	PR	00910–1398	397,985
Puerto Rico Department of the Family	Ave. Barbosa 306; P.O. Box 11398	San Juan	PR	00910–1398	1,064,057
Puerto Rico Mental Health and Anti-Addiction Services Administration.	Road No. 2 Km 8.2; Bo. Juan Sánchez Antiguo Hospital Mepsi Center.	Bayamón	PR	00959	1,507,760
Puerto Rico Mental Health and Anti-Addiction Services Administration.	Road No. 2 Km 8.2; Bo. Juan Sánchez Antiguo Hospital Mepsi Center.	Bayamón	PR	00959	335,621
Municipality of San Juan	P.O. BOX 70179	San Juan	PR	00923–8179	220,294
Municipality of San Juan	P.O. BOX 70179	San Juan	PR	00923–8179	320,572
Municipality of San Juan	P.O. BOX 70179	San Juan	PR	00923–8179	337,558
Municipality of San Juan	P.O. BOX 70179	San Juan	PR	00923–8179	494,012
Municipality of San Juan	P.O. BOX 70179	San Juan	PR	00923–8179	194,947
Municipality of San Juan	P.O. BOX 70179	San Juan	PR	00923–8179	94,088
Silo Mision Cristiana	Carr #2 Km 42.6; Barrio Algarrobo	Vega Baja	PR	00693	207,653
Solo Por Hoy	1716 Ave. Santa Inez; Urb. Altamesa	San Juan	PR	00921	151,940
Solo Por Hoy	1716 Ave. Santa Inez; Urb. Altamesa	San Juan	PR	00921	229,873
Municipality of Vega Alta	P.O. BOX 1390	Vega Alta	PR	00692	144,200
Municipality of Vega Baja	Padilla Street #41; Edif. Rafael Cano Llovio.	Vega Baja	PR	00693	262,654
Municipality of Vega Baja	Padilla Street #41; Edif. Rafael Cano Llovio.	Vega Baja	PR	00693	167,757
Municipality of Aguas Buenas, PR	P.O. Box 128	Aguas Buenas	PR	00703	57,146
Municipality of Caguas	P.O. Box 907	Caguas	PR	00726	372,534
Casa de la Bondad	P.O. Box 8999	Humacao	PR	00792–8999	84,612
Cayey, PR	Bo. Montellano; Carr PR #1 km 56.2	Cayey	PR	00737	209,580
Centro Deambulantes Cristo Pobre	Calle Union #124	Ponce	PR	00733–4651	347,917

Org. name	Street address	City	State	Zip code	Award amount
Coalicion de Coaliciones Pro Personas Sin Hogar de Puerto Rico.	44 Isabel St	Ponce	PR	00730	576,090
Coalicion de Coaliciones Pro Personas Sin Hogar de Puerto Rico.	44 Isabel St	Ponce	PR	00730	265,166
Corporacion Milagros del Amor	78 Gautier Benitez; P.O. Box 6445	Caguas	PR	00726–6445	162,054
Corporacion Milagros del Amor	78 Gautier Benitez; P.O. Box 6445	Caguas	PR	00726–6445	219,989
Fundacion de Desarrollo Comunal de Puerto Rico.	P.O. Box 6300; Rafael Cordero Ave., 2nd. Floor, Plaza del Mercado, Suite #18.	Caguas	PR	00726–6300	301,252
Municipio de Guayama	26 Vicente Pales St	Guayama	PR	00784	107,413
Hogar Fortaleza del Caido	Parcelas Vieques; calle #79	Loíza	PR	00772	86,887
Hogar Luz de Vida	P.O. Box 4007	Mayaguez	PR	00681	266,533
Hogar Nueva Mujer Santa Maria de la Merced.	LAS PARRAS 3, SECTOR MOGOTE; BARRIO TOITA.	Cayey	PR	00736	218,750
MUNICIPIO DE HORMIGUEROS	MATEO FAJARDO #1	HORMIGUEROS	PR	00660	46,150
Humacao, PR	P.O. Box 178	Humacao	PR	00792	78,754
Isabela, PR	75 CORCHADO ST	Isabela	PR	00662	44,880
Jayuya Municipality	Cementerio Strret	Jayuya	PR	00664	53,230
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	609,189
Lucha Contra el SIDA	P.O. Box 8479	San Juan	PR	00910–0479	364,445
Municipality of Mayagüez	Ramon Emeterio Betances #123 South	Mayagüez	PR	00681	147,029
MUNICIPIO DE NAGUABO	P.O. BOX 40	Naguabo	PR	00718	75,445
Ponce, PR	P.O. BOX 331709	Ponce	PR	00733–1709	127,362
Programa Guara Bi	P.O. Box 6581	San Juan	PR	00726	201,809
Programa Guara Bi	P.O. Box 6581	San Juan	PR	00726	143,447
Proyecto Matria	Calle Jimenez Sicardo #31	Caguas	PR	00725	478,820
Yauco, PR	P.O. Box 1; 13 Santiago Vivaldi Street	Yauco	PR	00698	33,468
Yauco, PR	P.O. Box 1; 13 Santiago Vivaldi Street	Yauco	PR	00698	207,836
Methodist Training and Outreach Center	#4–A Kronprindsens Gade	St. Thomas	VI	00802	68,474
VI Department of Human Services	1303 Hospital Ground Ste. 1	St. Thomas	VI	00802–6722	40,320
Virgin Islands Housing Finance Authority.	3202 Demarara Plaza; Suite 200	St. Thomas	VI	00802–6447	26,577
Total					19,519,104

Appendix J

FY2017 The Research and Evaluation, Demonstrations and Data Analysis and Utilization Program (HUDRD)

Contact: Curtissa Coleman (202) 402–7580.

Recipient	Address	City	Zip code	Amount
Project 1:				
University of North Carolina at Chapel Hill.	Off. Of Sponsored Research, 104 Airport Dr., Suite 2002, CB1360.	Chapel Hill, NC	27699–1360	$311,871
Project 2:				
Woodstock Institute	29 E Madison St., Ste. 710	Chicago, IL	60602–4566	335,027
The University of Idaho	876 Perimeter Dr	Moscow, ID	83844–3020	243,763
Total Projects				890,661

[FR Doc. 2019–12154 Filed 6–7–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[DOI–2018–0016; 19XE1700DX EECC000000 EX1EX0000.G40000]

Privacy Act of 1974; System of Records

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Rescindment of systems of records notices.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of the Interior is rescinding six systems of records notices from its existing inventory. These systems were managed by the former Minerals Management Service when they were superseded by Department-wide system of records notices; however, they were not formally rescinded. Subsequently, upon the dissolution of Minerals Management Service, responsibility for the six systems of records was transferred to the Bureau of Safety and Environmental Enforcement. This notice formally rescinds the six systems of records notices identified below.

DATES: These changes take effect upon publication.

ADDRESSES: You may submit comments, identified by docket number [DOI–2018–0016], by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the

Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

- Hand-delivering comments to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.
- *Email: DOI_Privacy@ios.doi.gov.*

All submissions received must include the agency name and docket number. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should be aware your entire comment including your personal identifying information, such as your address, phone number, email address, or any other personal identifying information in your comment, may be made publicly available at any time. While you may request to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Rowena Dufford, Associate Privacy Officer, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Mail Stop VAE–MSD, Sterling, VA 20166, email at *privacy@bsee.gov* or by telephone at (703) 787–1257.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior (DOI), Bureau of Safety and Environmental Enforcement (BSEE) is rescinding the following six systems of records notices, which were previously managed by the former Minerals Management Service (MMS), from its inventory of system notices.

- INTERIOR/MMS–2, Personal Property Accountability Records
- INTERIOR/MMS–3, Accident Reports and Investigations
- INTERIOR/MMS–4, Personnel Security System
- INTERIOR/MMS–5, Telephone/Employee Locator System
- INTERIOR/MMS–8, Advanced Budget/Accounting Control and Information System
- INTERIOR/MMS–9, Employee Counseling Services Program

The systems of records identified above were last published in their entirety in the **Federal Register** at 64 FR 8111–8118 (February 18, 1999). MMS published a notice in the **Federal Register** at 74 FR 42922 (August 25, 2009) to add a new routine use for each system of records to authorize disclosure of information to appropriate agencies, entities, and persons in the event of a data breach, in accordance with Office of Management and Budget Memorandum M–07–16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information.*

In May 2010, Secretary's Order 3299 directed the division of MMS into three independent entities with separate and clearly defined missions: BSEE, the Bureau of Ocean Energy Management, and the Office of Natural Resources Revenue. Responsibilities for these system of records notices transferred to BSEE. These six systems of records have been incorporated into DOI systems of records that are covered by published Department-wide systems of records notices, and are no longer being maintained under MMS systems of records notices. Rescinding these systems of records will have no adverse impacts on individuals. This rescindment will also promote the overall streamlining and management of Department of the Interior Privacy Act systems of records. This notice hereby rescinds the MMS system of records notices identified below.

SYSTEM NAME AND NUMBER:

1. INTERIOR/MMS–2, Personal Property Accountability Records, 64 FR 8111 (February 18, 1999). The records contained in the system of records are covered by and maintained in INTERIOR/DOI–58, Employee Administrative Records, 64 FR 19384 (April 20, 1999).

2. INTERIOR/MMS–3, Accident Reports and Investigations, 64 FR 8112 (February 18, 1999). The records contained in the system of records are covered by and maintained in INTERIOR/DOI–60, Safety Management Information System, 81 FR 73135 (October 24, 2016).

3. INTERIOR/MMS–4, Personnel Security System, 64 FR 8113 (February 18, 1999). The records contained in the system of records are covered by and maintained in INTERIOR/DOI–45, HSPD–12: Identity Management System and Personnel Security Files, 72 FR 11036 (March 12, 2007); INTERIOR/DOI–46, HSPD–12: Physical Security Files, 72 FR 11043 (March 12, 2007); and INTERIOR/DOI–47, HSPD–12: Logical Security Files (Enterprise Access Control Service/EACS), 72 FR 11040 (March 12, 2007).

4. INTERIOR/MMS–5, Telephone/Employee Locator System, 64 FR 8115 (February 18, 1999). The records contained in the system of records are covered by and maintained in INTERIOR/DOI–58, Employee Administrative Records, 64 FR 19384 (April 20, 1999).

5. INTERIOR/MMS–8, Advanced Budget/Accounting Control and Information System, 64 FR 8116 (February 18, 1999). The records contained in the system of records are covered by and maintained in three Department-wide systems of records: INTERIOR/DOI–86, Accounts Receivable: FBMS, 73 FR 43772 (July 28, 2008); INTERIOR/DOI–87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008); INTERIOR/DOI–88, Travel Management: FBMS, 73 FR 43769 (July 28, 2008).

6. INTERIOR/MMS–9, Employee Counseling Services Program, 64 FR 8117 (February 18, 1999). The records contained in the system of records are covered by and maintained in INTERIOR/DOI–04, Employee Assistance Program Records, 64 FR 20011 (April 23, 1999).

HISTORY:

1. INTERIOR/MMS–2, Personal Property Accountability Records, 64 FR 8111 (February 18, 1999); modification published at 74 FR 42922 (August 25, 2009).

2. INTERIOR/MMS–3, Accident Reports and Investigations, 64 FR 8112 (February 18, 1999); modification published at 74 FR 42922 (August 25, 2009).

3. INTERIOR/MMS–4, Personnel Security System, 64 FR 8113 (February 18, 1999); modification published at 74 FR 42922 (August 25, 2009).

4. INTERIOR/MMS–5, Telephone/Employee Locator System, 64 FR 8115 (February 18, 1999); modification published at 74 FR 42922 (August 25, 2009).

5. INTERIOR/MMS–8, Advanced Budget/Accounting Control and Information System, 64 FR 8116 (February 18, 1999); modification published at 74 FR 42922 (August 25, 2009).

6. INTERIOR/MMS–9, Employee Counseling Services Program, 64 FR 8117 (August 25, 2009); modification published at 74 FR 42922 (August 25, 2009).

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2019–12151 Filed 6–7–19; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1057; (Rescission Proceeding)]

Certain Robotic Vacuum Cleaning and Components Thereof Such as Spare Parts; Commission Determination To Institute a Rescission Proceeding; Rescission of the Remedial Orders; Termination of the Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute a rescission proceeding, to rescind a November 30, 2018 limited exclusion order and four cease-and-desist orders (''the remedial orders''), and to terminate the rescission proceeding.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*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 an investigation on May 23, 2017, based on a complaint filed by iRobot Corporation of Bedford, Massachusetts (''iRobot''). 82 FR 23593–94. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain robotic vacuum cleaning devices and components thereof that infringe certain claims of, *inter alia,* U.S. Patent No. 9,038,233 (''the '233 patent''). *Id.* The Commission's notice of investigation named as respondents, *inter alia,* Shenzhen Silver Star Intelligent Technology Co., Ltd., of Shenzhen, China (''Silver Star''), and bObsweep USA, of Henderson, Nevada, and bObsweep Inc., of Toronto, Canada (together, ''bObsweep''). *Id.* at 23593. The Office of Unfair Import Investigations did not participate in the investigation. *Id.*

On November 30, 2018, the Commission found, *inter alia,* that Silver Star and bObsweep violated section 337 with respect to the '233 patent, and issued the remedial orders.

On May 7, 2019, iRobot, bObsweep, and Silver Star filed a joint petition for rescission of the limited exclusion order and the cease and desist orders that issued on November 30, 2018. The parties state that they have entered into settlement agreements that resolve all disputes among the parties regarding the subject matter of the investigation. No response to the petition was filed.

Having considered the petition, the Commission has determined to institute a rescission proceeding and to rescind the remedial orders. The rescission proceeding is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–12088 Filed 6–7–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1057]

Consolidated Advisory Opinion and Enforcement Proceeding; Certain Robotic Vacuum Cleaning Devices and Components Thereof Such as Spare Parts; Commission's Determination Not To Review an Initial Determination Terminating the Enforcement Proceeding; Termination of the Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review an initial determination (''ID'') (Order No. 53) issued by the presiding administrative law judge (''ALJ'') that terminates the enforcement proceeding. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*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 an investigation on May 23, 2017, based on a complaint filed by iRobot Corporation of Bedford, Massachusetts (''iRobot''). 82 FR 23593–94. The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain robotic vacuum cleaning devices and components thereof that infringe certain claims of, *inter alia,* U.S. Patent No. 9,038,233 (''the '233 patent''). *Id.* The Commission's notice of investigation named as respondents, *inter alia,* Shenzhen Silver Star Intelligent Technology Co., Ltd., of Shenzhen, China (''Silver Star''), and bObsweep USA, of Henderson, Nevada, and bObsweep Inc., of Toronto, Canada (together, ''bObsweep''). *Id.* at 23593. The Office of Unfair Import Investigations did not participate in the investigation. *Id.*

On November 30, 2018, the Commission found, *inter alia,* that Silver Star and bObsweep violated section 337 with respect to the '233 patent, and issued a limited exclusion order (''LEO'') against, *inter alia,* Silver Star and bObsweep, with respect to certain claims of the '233 patent. 83 FR 63186–87 (Dec. 7, 2018).

On January 30, 2019, Silver Star filed a request for an advisory opinion that eight of its new products do not violate the LEO. On March 21, 2019, the Commission instituted an advisory

opinion proceeding, and named as parties iRobot, Silver Star, and the Office of Unfair Import Investigations (''OUII''). 84 FR 10531 (Mar. 21, 2019).

On February 21, 2019, iRobot filed an enforcement complaint against bObsweep. On April 1, 2019, the Commission instituted a formal enforcement proceeding, and named as parties iRobot, bObsweep, and OUII. 84 FR 12289 (Apr. 1, 2019). The Commission consolidated the formal enforcement proceeding with the advisory opinion proceeding described above.

On April 12, 2019, iRobot and Silver Star filed a joint motion to terminate the advisory opinion proceeding based on a settlement agreement. The Commission terminated the advisory opinion proceeding on May 15, 2019.

On May 7, 2019, iRobot and bObsweep filed a joint motion to terminate the enforcement proceeding based on a settlement agreement. On May 15, 2019, OUII filed a response arguing that the Commission should grant the motion.

On May 20, 2019, the ALJ issued the subject ID, granting the motion and terminating the enforcement proceeding based on a settlement agreement. The ALJ found that the motion complied with Rule 210.21(b) and that there is no evidence that termination by settlement has any adverse effect on the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 4, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–12094 Filed 6–7–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 001–2019]

Privacy Act of 1974; Systems of Records

AGENCY: Criminal Division, United States Department of Justice.

ACTION: Notice of a modified System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Criminal Division (CRM), a component within the United States Department of Justice (DOJ or Department), proposes to modify the existing System of Records Notice titled ''United States Victims of State Sponsored Terrorism Fund (USVSSTF) File System,'' JUSTICE/CRM–029, last published in its entirety in the **Federal Register** at 81 FR 45539 (July 14, 2016), and amended at 82 FR 24151 (May 25, 2017). CRM proposes to add three additional routine uses and provide non-substantive updates to its current statutory authorization.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day comment period for the routine uses claimed in the ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM'' section of this system of records notice. Therefore, please submit any comments by July 10, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments to the Department of Justice, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, Department of Justice, Two Constitution Square, 145 N Street NE, Suite 8W.300, Washington, DC 20530, by facsimile at 202–307–0693, or by email at *privacy.compliance@usdoj.gov*. To ensure proper handling, please reference the above-listed CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Amanda Marchand Jones, Chief, FOIA/PA Unit, Criminal Division, 1301 New York Avenue NW, Washington, DC 20530; phone at (202) 616–0307; facsimile at (202) 514–6117.

SUPPLEMENTARY INFORMATION: The United States Victims of State Sponsored Terrorism Fund (''Fund'') was established by the Justice for United States Victims of State Sponsored Terrorism Act (''Act''), 34 U.S.C. 20144, formerly codified as 42 U.S.C. 10609. Pursuant to the Act, the Fund may compensate eligible United States persons who (1) hold a final judgment issued by a United States district court awarding the applicant compensatory damages arising from acts of international terrorism for which a foreign state sponsor of terrorism was found not immune from the jurisdiction of the courts of the United States under the Foreign Sovereign Immunities Act; or (2) were taken and held hostage from the United States Embassy in Tehran, Iran, during the period beginning November 4, 1979, and ending January 20, 1981, or are spouses and children of these hostages, if also identified as a member of the proposed class in case number 1:00–CV–03110 (EGS) of the United States District Court for the District of Columbia.

The Department previously published the current System of Records Notice, ''United States Victims of State Sponsored Terrorism Fund (USVSSTF) File System,'' JUSTICE/CRM 029, in the **Federal Register** at 81 FR 45539 (July 14, 2016). The JUSTICE/CRM 029 system collects, maintains, and generates records used by CRM to adjudicate applicants' claims for compensation filed with the Fund. Applications are submitted to the Fund by individual claimants, counsel for claimants, and personal representatives of the estates of deceased individuals. A claimant must provide sufficient information to allow the Fund's Special Master to determine whether the claimant is eligible to receive compensation, and if so, what amount of compensation. The Act mandates the collection of information regarding other sources of compensation received by claimant related to the judgment, which may modify the amount of compensation. CRM receives and maintains copies of the application forms filed with the Fund; documentation submitted in support of the claims; and records obtained or generated to assess, adjudicate, and pay claims.

CRM proposes two substantive modifications. First, CRM proposes an update to the statutory citation of the Act, to reflect its recodification from 42 U.S.C. 10609 to 34 U.S.C. 20144. Second, CRM proposes to add three routine uses that would permit the disclosure of information in the system to: (1) Professional organizations or associations with which individuals covered by this system of records may be affiliated, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline; (2) agencies, organizations, and individuals for the purposes of audit and oversight operations, and meeting reporting requirements; and (3) recipients as mandated by Federal statute or treaty.

These additional routine uses were not originally proposed when JUSTICE/CRM–029 was first published. The new routine uses will promote transparency and accountability, and assist the Department and the Special Master in administering the Fund. First, the disclosure to professional organizations or associations allows the Fund to, for example, share information with appropriate authorities related to an

attorney's conduct in order to ensure the proper evaluation of claims and compliance with the Act's limitations on attorneys' fees, and to maintain the integrity of the Fund. Second, disclosure to entities or individuals conducting audits or oversight is required by Department policies and will assist in maintaining the integrity of the Fund. Lastly, disclosures mandated by Federal statute or treaty are required to comply with legal requirements, including the Act's provisions regarding subrogation rights and relations between foreign states and the United States. Accordingly, these new routine uses are related to and compatible with the original purpose of JUSTICE/CRM 029.

In accordance with 5. U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this notice of a modified system of records.

Dated: June 3, 2019.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/CRM–029

SYSTEM NAME AND NUMBER:

United States Victims of State Sponsored Terrorism Fund (USVSSTF) File System, JUSTICE/CRM–029.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are located at: U.S. Department of Justice, Criminal Division, 950 Pennsylvania Avenue NW, Washington, DC 20530; Federal Records Center, Suitland, MD 20409, 5151 Blazer Parkway, Suite A, Dublin, OH 43017; and 1985 Marcus Avenue, Suite 200, Lake Success, NY 11042.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Criminal Division, U.S. Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20503–0001.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

[Delete existing paragraph and replace with the following:]

Justice for United States Victims of State Sponsored Terrorism Act, enacted into law as Title IV, Division O, section 404 of the Consolidated Appropriations Act, 2016, Public Law 114–113, codified at 34 U.S.C. 20144.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

[Add routine uses (l) through (n) as follows:]

(l) To professional organizations or associations with which individuals covered by this system of records may be affiliated, such as state bar disciplinary authorities, to meet their responsibilities in connection with the administration and maintenance of standards of conduct and discipline.

(m) To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the Department and meeting related reporting requirements.

(n) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

* * * * *

HISTORY:

[Delete existing paragraph and replace with the following:]

81 FR 45539 (July 14, 2016): Last published in full.

82 FR 24151, 156 (May 25, 2017): Modified to revise existing and add new routine uses.

[FR Doc. 2019–12153 Filed 6–7–19; 8:45 a.m.]

BILLING CODE 4410–14–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 02–2019]

Privacy Act of 1974; Systems of Records

AGENCY: Civil Rights Division, United States Department of Justice.

ACTION: Notice of a New System of Records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the Civil Rights Division (CRT), a component within the United States Department of Justice (DOJ or Department), proposes to develop a new system of records notice titled DOJ Insight Program Records System, JUSTICE/CRT–011. CRT proposes to establish this system of records to facilitate the Department's Insight Program, a training activity for DOJ attorneys to, among other tasks, gauge reaction and thought processing of DOJ-volunteers presented with proposed trial arguments.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by July 10, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, National Place Building, 1331 Pennsylvania Avenue NW, Suite 1000, Washington, DC 20530; by facsimile at 202–307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Daniel Yi, Senior Counsel, Civil Rights Division, 950 Pennsylvania Avenue NW, Washington, DC 20530, phone: (202) 514–4609.

SUPPLEMENTARY INFORMATION: In order to assist in achieving its mission and performance goals by improving employee and organizational performance, DOJ is authorized to develop training activities for its employees using a full range of options to meet its mission-related organizational and employee development needs. As such, the Department recognizes that trial attorneys faced with important questions and decisions for their juries and judges lack available resources to gauge reaction and thought processing when those individuals are presented with the DOJ attorneys' proposed arguments. Through the Insight Program, the Department believes it can assist and train its trial attorneys by leveraging a community of DOJ volunteers to review and provide feedback to proposed strategies and arguments.

The InSight Program will invite willing DOJ volunteers to participate in a community of virtual focus group panelists who are ready and willing to provide insights about certain DOJ cases. InSight will attempt to assemble a panel of DOJ volunteers that is similar to a trial attorney's jury and/or judge. The volunteer panelists will be provided case-related information and watch recorded videos of the DOJ attorney's anticipated strategy, and afterwards, will anonymously provide feedback to the DOJ attorney. The Justice Management Division (JMD) will provide technical resources and support to facilitate the InSight Program, but CRT will retain manage and oversight of the InSight Program.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: June 3, 2019.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/CRT–011

SYSTEM NAME AND NUMBER:

DOJ Insight Program Records System, JUSTICE/CRT–011.

SECURITY CLASSIFICATION:

Controlled Unclassified Information.

SYSTEM LOCATION:

Access to these electronic records includes all Department locations that the JMD or CRT operates, or that support CRT or JMD operations, including but not limited to, Two Constitution Square, 145 N Street NE, Washington, DC 20530. Some or all system information may also be duplicated at other locations where the Department has granted direct access to support CRT and JMD operations, system backup, emergency preparedness, and/or continuity of operations. To determine the location of particular records within the DOJ Insight Program Records System, contact the system manager, whose contact information is listed in the ''SYSTEM MANAGER(S)'' paragraph, below.

SYSTEM MANAGER(S):

Special Counsel for Innovation, Civil Rights Division, 950 Pennsylvania Avenue NW, Washington, DC 20530, phone: (202) 514–4609.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 4103, and 5 CFR part 410.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to facilitate the Department's Insight Program, a DOJ-developed training activity for DOJ attorneys to gauge reaction and thought processing of individuals presented with proposed trial arguments. This includes, but is not limited to: Providing Insight Program administrators with volunteer panelist information needed to assemble a panel similar to a DOJ trial attorney's jury and/or judge; allowing volunteer panelists to anonymously provide feedback to DOJ trial attorneys about proposed case strategies and presentations; allowing DOJ trial attorneys to use the feedback provided to refine strategies and arguments.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Insight Program Records System collects and maintains information on DOJ employees who (1) administer the DOJ Insight Program; (2) volunteer as a DOJ Insight Program volunteer; or (3) otherwise request to participate in the DOJ Insight Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Insight Program Records System contains information on DOJ employees administering, participating in, or volunteering for the Insight Program. Such information includes, but is not limited to:

A. Basic participating information (for example, name, division, contact information, assigned Insight Program number, and signed consent forms) on DOJ Insight Program administrators, DOJ Insight Program volunteers, and DOJ trial attorneys participating in the DOJ Insight Program;

B. Background and attitudinal information on DOJ Insight Program volunteers;

C. Information used to facilitate DOJ trial attorneys' focal group requests (for example, criteria used to select the appropriate DOJ Insight Program volunteers, and case-relevant documents and video recordings of DOJ trial attorneys);

D. Tailored information, questionnaires, and feedback related to a DOJ trial attorney's focal group request; and

E. Insight Program information system user activity and audit logs.

RECORD SOURCE CATEGORIES:

Records contained in this system of records are derived from information provided directly by the DOJ employee or from the information system accessing the Insight Program Records System.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

B. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

C. To any person or entity that the [component/office] has reason to believe possesses information regarding a matter within the jurisdiction of the [component/office], to the extent deemed to be necessary by the [component/office] in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

F. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

G. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

H. To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

I. To appropriate officials and employees of a Federal agency or entity

that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

J. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

K. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

L. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

M. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

N. To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

O. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations of the Department and meeting related reporting requirements.

P. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in an electronic form in a framework of computer systems that allows distributed processing of data sets across clusters of computers. Records are stored securely in accordance with applicable executive orders, statutes, and agency implementing recommendations. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media. Hard copies of records may also be maintained in paper format, which will be stored in filing cabinets in a secure room.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by name or assigned Insight Program number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of as Department-wide legal and litigation training records, in accordance with the schedule approved by the Archivist of the United States, Job Number DAA–0060–2017–0009–0002.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Both electronic and paper records are safeguarded in accordance with appropriate laws, rules, and policies, including Department and CRT policies. The records are protected by physical security methods and dissemination/access controls. Direct access is controlled and limited to approved personnel with an official need for access to perform their duties. Paper files are stored: (1) In a secure room with controlled access; (2) in locked file cabinets; and/or (3) in other appropriate GSA approved security containers. Information systems and electronic records are protected by physical, technical, and administrative safeguards. Records are located in a building with restricted access and are kept in a locked room with controlled access or are safeguarded with approved encryption technology. The use of multifactor authentication is required to access electronic systems. Information may be transmitted to routine users on a need to know basis in a secure manner and to others upon verification of their authorization to access the information and their need to know. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be addressed to the Civil Rights Division FOIA/Privacy Act Branch, Patrick Henry Building, Room 9154, 601 D St. NW, Washington, DC 20579, *CRT.FOIArequests@usdoj.gov.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Although no specific form is required, you may obtain forms for this purpose from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website at *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 Subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing and the envelope and letter should be clearly marked ''Privacy Act Amendment Request.'' All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2019–12152 Filed 6–7–19; 8:45 a.m.]

BILLING CODE 4410–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0032]

Information Collection: Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals.''

DATES: Submit comments by July 10, 2019. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs (3150–0090), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0032 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0032. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2019–0032 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS under Accession No. ML19098B570. The supporting statement is available in ADAMS under Accession No. ML19073A120.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled, ''Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 13, 2019, 84 FR 3831.

1. *The title of the information collection:* Pre-Application Communication and Scheduling for Accident Tolerant Fuel Submittals.
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.
4. *The form number if applicable:* Not applicable.
5. *How often the collection is required or requested:* Annually.
6. *Who will be required or asked to respond:* All fuel vendors who anticipate submitting accident tolerant fuel (ATF) design applications. All potential applicants for the fabrication, transportation, and storage of ATF under the provisions of title 10 of the *Code of Federal Regulations* (10 CFR) part 70, ''Domestic Licensing of Special Nuclear Material,'' 10 CFR part 71, ''Packaging and Transportation of Radioactive Material,'' and 10 CFR part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste.''
7. *The estimated number of annual responses:* 9.
8. *The estimated number of annual respondents:* 9.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 1,080.
10. *Abstract:* Accident tolerant fuel (ATF) development is a joint effort between the U.S. nuclear industry and the U.S. Department of Energy to design and pursue approval of various fuel types with enhanced accident tolerance. In preparing the NRC to review these advanced fuel designs, the agency is

conducting advanced planning, reviewing the existing regulatory infrastructure, and identifying needs for additional analysis capabilities. The intent of this information collection is to help inform the NRC's budget and resource planning for the eventual review of ATF-related applications. Specifically, the NRC seeks ATF scheduling information for pre-application activities, topical report submittals, and other licensing submittals from all respondents. This information will allow the NRC to better allocate its resources to support the activities leading up to and including the review of an ATF submittal. The proper allocation of resources promotes the efficient completion of the NRC's review responsibilities.

Dated at Rockville, Maryland, this 5th day of June 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–12107 Filed 6–7–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–346, 50–440, 50–334, and 50–412; NRC–2019–0094]

FirstEnergy Nuclear Operating Company, FirstEnergy Nuclear Generation, LLC, Beaver Valley Power Station, Unit Nos. 1 and 2, Davis-Besse Nuclear Power Station, Unit No. 1, Perry Nuclear Power Plant, Unit No. 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a September 11, 2018, request from FirstEnergy Nuclear Operating Company (FENOC) and FirstEnergy Nuclear Generation, LLC. The exemption allows a certified fuel handler, besides a licensed senior operator, to approve the emergency suspension of security measures for Beaver Valley Power Station, Units 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; and Perry Nuclear Power Plant, Unit No. 1 during certain emergency conditions or during severe weather. Although the exemption is effective upon receipt, the actions permitted by the exemption for the facilities may not be implemented until both the ''Certification of Permanent Cessation of Operations'' and the ''Certification of Permanent Fuel Removal'' have been submitted for that facility.

DATES: The exemption was issued on June 4, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0094 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0094. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; e-mail: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Document collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Bhalchandra K. Vaidya, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3308; e-mail: *Bhalchandra.Vaidya@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC is making the documents identified below available to interested persons through one or more of the following methods, as indicated. To access documents related to this action, see **ADDRESSES** section of this document.

Document	ADAMS accession No.
FirstEnergy Nuclear Operating Company, ''Certification of Permanent Cessation of Power Operations for Beaver Valley Power Station, Unit Nos. 1 and 2, Davis-Besse Nuclear Power Station, Unit No. 1, and Perry Nuclear Power Plant, Unit No. 1,'' Dated April 25, 2018.	ML18115A007
FirstEnergy Nuclear Operating Company, ''Request for Approval of Certified Fuel Handler Training Program,'' Dated August 15, 2018.	ML18227A019
FirstEnergy Nuclear Operating Company, ''Approval of Certified Fuel Handler Training Program,'' Dated April 11, 2019	ML19028A030
FirstEnergy Nuclear Operating Company, ''FENOC FLEET-Beaver Valley Power Station, Unit Nos. 1 and 2; Davis-Besse Nuclear Power Station, Unit No. 1; and Perry Nuclear Power Plant, Unit No. 1—Request for Exemption Related to the Suspension of Security Measures in an Emergency or During Severe Weather,'' Dated September 11, 2018.	ML18254A290

The text of the exemption is attached.

Dated at Rockville, Maryland, on June 4, 2019.

For the Nuclear Regulatory Commission.

Bhalchandra K. Vaidya,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment: Exemption Related to the Approval Authority for Suspension of Security Measures in an Emergency or During Severe Weather

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-334, 50-412, 50-346, and 50-440

FirstEnergy Nuclear Operating Company

Beaver Valley Power Station, Unit Nos. 1 and 2

Davis-Besse Nuclear Power Station, Unit No. 1

Perry Nuclear Power Plant, Unit No. 1

Exemption Related to the Approval Authority for Suspension of Security Measures in an Emergency or During Severe Weather

I. Background.

FirstEnergy Nuclear Operating Company (FENOC) and FirstEnergy Nuclear Generation, LLC (collectively, the licensee), are the holders of the following operating licenses: (1) Renewed Facility Operating License Nos. DPR-66 and NPF-73, at Beaver Valley Power Station, Unit Nos. 1 and 2 (Beaver Valley), issued on November 5, 2009; (2) Renewed Facility Operating License No. NPF-3 at Davis-Besse Nuclear Power Station (Davis-Besse), Unit No. 1, issued on December 8, 2015; and (3) Facility Operating License No. NPF-58 at Perry Nuclear Power Plant (Perry), Unit No. 1, issued on November 13, 1986. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC), now or hereafter in effect.

By letter dated April 25, 2018 (Agencywide Document Access and Management System (ADAMS) Accession No. ML18115A007), FENOC submitted formal notification to the NRC pursuant to paragraph 50.82(a)(1)(i) to Title 10 of the *Code of Federal Regulations* (10 CFR) and 10 CFR 50.4(b)(8) of the intention to permanently cease power operations at the Davis-Besse, Unit No. 1, by May 31, 2020; the Perry, Unit No. 1, and the Beaver Valley, Unit No. 1, by May 31, 2021; and the Beaver Valley, Unit No. 2, by October 31, 2021.

Pursuant to 10 CFR 50.82(a)(2), upon docketing of the certifications for permanent cessation of operations and of permanent removal of fuel from the reactor vessel, the 10 CFR 50 license no longer authorize reactor operation or emplacement or retention of fuel in the reactor vessel. As a result, licensed senior operators (i.e., individual licensed under 10 CFR part 55 to manipulate the controls of a facility and to direct the licensed activities of licensed operators) will no longer be required to support plant operating activities. Instead, certified fuel handlers (CFHs) (i.e., non-licensed operators who have qualified in accordance with a fuel handler training program approved by the Commission) will perform activities associated with decommissioning, irradiated fuel handling, and management. Approval of a fuel handler training program is needed to facilitate these activities.

By letter dated August 15, 2018 (ADAMS Accession No. ML18227A019), FENOC submitted a request for NRC approval of the CFH Training and Retraining Program for these units. By letter dated April 11, 2019 (ADAMS Accession No. ML19028A030), the NRC approved the CFH Training and Retraining Program for the above mentioned FENOC facilities.

II. Request/Action.

The Commission's regulation at 10 CFR 73.55(p)(1) addresses the suspension of security measures in an emergency (73.55(p)(1)(i)) and during severe weather (73.55(p)(1)(ii)) saying:

The licensee may suspend implementation of affected requirements of this section under the following conditions:

(i) In accordance with §§ 50.54(x) and 50.54(y) of this chapter, the licensee may suspend any security measures under this section in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This suspension of security measures must be approved as a minimum by a licensed senior operator before taking this action.

(ii) During severe weather when the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection. This suspension of security measures must be approved, as a minimum, by a licensed senior operator, with input from the security supervisor or manager, before taking this action.

On September 11, 2018 (ADAMS Accession No. ML18254A290), FENOC requested an exemption from the portions of 10 CFR 73.55(p)(1)(i) and (ii) that require the suspension of security measures to be approved as a minimum by a licensed senior operator. The proposed exemption would allow the licensee to use a CFH to approve the suspension of security measures.

The NRC's security rules have long recognized the potential need to suspend security or safeguards measures under certain conditions. Accordingly, 10 CFR 50.54(x) and (y), first published in 1983, allow a licensee to take reasonable steps in an emergency that deviate from license conditions when those steps are ''needed to protect the public health and safety'' and there are no conforming comparable measures (48 FR 13970; April 1, 1983). As originally issued, the deviation from license conditions must be approved by, as a minimum, a licensed senior operator. In 1986, in its final rule, ''Miscellaneous Amendments Concerning the Physical Protection of Nuclear Power Plants'' (51 FR 27821; August 4, 1986), the Commission issued 10 CFR 73.55(a), stating in part:

In accordance with § 50.54 (x) and (y) of Part 50, the licensee may suspend any safeguards measures pursuant to § 73.55 in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specification that can provide adequate or equivalent protection is immediately apparent. This suspension must be approved as a minimum by a licensed senior operator prior to taking the action.

In 1996, the NRC made a number of regulatory changes to address decommissioning. One of the changes was to amend 10 CFR 50.54(x) and (y) to authorize a non-licensed operator called a ''certified fuel handler,'' in addition to a licensed senior operator, to approve such protective steps. Specifically, in addressing the role of the CFH during emergencies, the Commission stated in the proposed rule, ''Decommissioning of Nuclear Power Reactors'' (60 FR 37379; July 20, 1995):

The Commission is proposing to amend 10 CFR 50.54(y) to permit a certified fuel handler at nuclear power reactors that have permanently ceased operations and permanently removed

fuel from the reactor vessel, subject to the requirements of § 50.82(a) and consistent with the proposed definition of ''Certified Fuel Handler'' specified in § 50.2, to make these evaluations and judgments. A nuclear power reactor that has permanently ceased operations and no longer has fuel in the reactor vessel does not require a licensed individual to monitor core conditions. A certified fuel handler at a permanently shutdown and defueled nuclear power reactor undergoing decommissioning is an individual who has the requisite knowledge and experience to evaluate plant conditions and make these judgments.

In the final rule (61 FR 39298; July 29, 1996), the NRC added the following definition to 10 CFR 50.2, ''[c]ertified fuel handler means, for a nuclear power reactor facility, a non-licensed operator who has qualified in accordance with a fuel handler training program approved by the Commission.'' However, the decommissioning rule did not propose or make parallel changes to 10 CFR 73.55(a), and did not discuss the role of a non-licensed CFH.

In the final rule, ''Power Reactor Security Requirements'' (74 FR 13926; March 27, 2009), the NRC relocated the security suspension requirements from 10 CFR 73.55(a) to 10 CFR 73.55(p)(1)(i) and (ii). The role of a CFH was not discussed in the rulemaking, so the suspension of security measures in accordance with 10 CFR 73.55(p) continue to require approval, as a minimum, by a licensed senior operator, even for a site that otherwise no longer operates.

III. Discussion.

Under 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant an exemption from the requirements of 10 CFR part 73, when the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. As explained below, the proposed exemption is lawful, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

A. Authorized by Law.

The exemption would permit a CFH to approve the suspension of security measures during emergencies or severe weather. Although the exemption is effective upon receipt, the actions permitted by the exemption may not be implemented at a facility until the 10 CFR part 50 license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel in accordance with 10 CFR 50.82(a)(2). The licensee intends to align these regulations with 10 CFR 50.54(y) by authorizing a CFH, in addition to a licensed senior operator, to approve the suspension of security measures during emergencies or severe weather.

Per 10 CFR 73.5, the NRC is authorized to grant specific exemptions from the requirements of 10 CFR part 73. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC regulations or other applicable laws. Therefore, the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security.

The NRC staff determined that the requested exemption would not endanger life or property, or the common defense and security. The requested exemption would permit a CFH to approve suspension of security measures during emergencies or severe weather. The NRC staff finds that the exemption does not endanger life or property, or the common defense and security for the reasons discussed below.

First, 10 CFR 73.55(p)(2) continues to require that ''[s]uspended security measures must be reinstated as soon as conditions permit.''

Second, the suspension of security measures for emergencies under 10 CFR 73.55(p)(1)(i) will continue to be invoked only ''when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent.'' Thus, the exemption would not prevent the licensee from meeting the underlying purpose of 10 CFR 73.55(p)(1)(i), to protect public health and safety.

Third, the suspension of security measures for severe weather under 10 CFR 73.55(p)(1)(ii) will continue to be used only when ''the suspension of affected security measures is immediately needed to protect the personal health and safety of security force personnel, and no other immediately apparent action consistent with the license conditions and technical specifications can provide adequate or equivalent protection.'' The requirement in 10 CFR 73.55(p)(1)(ii) to receive input from the security supervisor or manager will remain. Therefore, the exemption would not prevent the licensee from meeting the underlying purpose of 10 CFR 73.55(p)(1)(ii) to protect the health and safety of the security force.

Additionally, by letter dated April 11, 2019, the NRC approved FENOC's CFH Training and Retraining Program for the aforementioned FENOC facilities. The NRC staff found that, among other things, the program addresses the safe conduct of decommissioning activities, safe handling and storage of spent fuel, and the appropriate response to plant emergencies. Because a CFH is sufficiently trained and qualified under an NRC-approved program, the NRC staff considers a CFH to have sufficient knowledge of operational and safety concerns, such that allowing a CFH to suspend security measures during emergencies or severe weather will not result in undue risk to public health and safety.

In addition, since the exemption request allows a CFH the same authority currently given to the licensed senior operator under 10 CFR 73.55(p)(1)(i) and (ii), no change is required to physical security. Since no change is required to physical security, the exemption would not reduce the overall effectiveness of the physical security plan and would not adversely impact the licensee's ability to physically secure the site or protect special nuclear material at Davis-Besse, Unit No. 1; Perry, Unit No. 1; and Beaver Valley, Unit Nos. 1 and 2, and thus, would not have an effect on the common defense and security. The NRC staff has concluded that the exemption does not reduce security measures currently in place to protect against radiological sabotage. Therefore, allowing a CFH, besides a licensed senior operator, to approve the suspension of security measures during an emergency or severe weather, will not endanger life, property, or the common defense and security.

C. Otherwise in the Public Interest.

FENOC's proposed exemption would allow a CFH, besides a licensed senior operator, to approve suspension of security measures during an emergency when ''immediately needed to protect the public health and safety'' or severe weather when ''immediately needed to protect the personal health and safety of security force personnel.'' If the exemption is not granted, Davis-Besse, Perry, and Beaver Valley, will be required to have a licensed senior operator available to approve suspension of security measures during severe weather and emergencies for a permanently shutdown plant, even though there would no longer be a requirement for a licensed senior operator after the certifications required

by 10 CFR 50.82(a)(1)(i) and (ii) are submitted.

This exemption is in the public interest for two reasons. First, without the exemption, there is uncertainty regarding how the licensee will invoke temporary suspension of security measures that may be needed for protecting public health and safety or the safety of the security force personnel during emergencies and severe weather given the differences as explained in ''Request/Action'' above, between the requirements in 10 CFR 73.55(p)(1)(i) and (ii) and 10 CFR 50.54(y). The exemption would allow the licensee to make decisions pursuant to 10 CFR 73.55(p)(1)(i) and (ii) without having to maintain a staff of licensed senior operators. The exemption would also allow the licensee to have an established procedure in place to allow a trained CFH to suspend security measures in the event of an emergency or severe weather. Second, the consistent and efficient regulation of nuclear power plants serves the public interest. This exemption would assure consistency between the security regulations in 10 CFR part 73 and 10 CFR 50.54(y) and the requirements concerning licensed operators in 10 CFR part 55.

The NRC staff has determined that granting the licensee's proposed exemption would allow the licensee to designate a CFH with qualifications appropriate for a permanently shutdown and defueled reactor to approve the suspension of security measures during an emergency. This role of the CFH to protect the public health and safety, and during severe weather to protect the safety of the security force personnel, is consistent with the similar authority provided by 10 CFR 50.54(y). Therefore, the exemption is in the public interest.

D. Environmental Consideration.

The NRC's approval of the exemption to security requirements belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the category of actions does not individually or cumulatively have a significant effect on the human environment. Specifically, the exemption is categorically excluded from further analysis under 10 CFR 51.22(c)(25).

Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 is a categorical exclusion provided that (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve: recordkeeping requirements; reporting requirements; inspection or surveillance requirements; equipment servicing or maintenance scheduling requirements; education, training, experience, qualification, requalification or other employment suitability requirements; safeguard plans, and materials control and accounting inventory scheduling requirements; scheduling requirements; surety, insurance or indemnity requirements; or other requirements of an administrative, managerial, or organizational nature.

The Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, has determined that the granting of the exemption request involves no significant hazards consideration because allowing a CFH, besides a licensed senior operator, to approve the security suspension at a defueled shutdown power plant does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The exempted security regulation is unrelated to any operational restriction. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. The exempted regulation is not associated with construction, so there is no significant construction impact. The exempted regulation does not concern the source term (i.e., potential amount of radiation in an accident) nor mitigation. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. The requirement to have a licensed senior operator approve departure from security actions is viewed as involving safeguards, materials control, and managerial matters.

Therefore, pursuant to 10 CFR 51.22(b) and (c)(25), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusion

The NRC has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee's request for an exemption from the requirements of 10 CFR 73.55(p)(1)(i) and (ii) to authorize that the suspension of security measures must be approved, as a minimum, by either a licensed senior operator or a CFH at applicalbe FENOC facilities during emergency or severe weather, once the certifications required under 10 CFR 50.82(a)(1) have been submitted.

The exemption is effective upon receipt.

Dated at Rockville, Maryland, this 4th day of June 2019.

For the Nuclear Regulatory Commission.

/RA/

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–12065 Filed 6–7–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2019–145 and CP2019–161]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 12, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2019–145 and CP2019–161; *Filing Title:* USPS Request to Add Priority Mail Contract 530 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 4, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 12, 2019.

This Notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–12134 Filed 6–7–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., June 19, 2019.

PLACE: 8th Floor Board Conference Room, 844 North Rush Street, Chicago, Illinois 60611.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC:

(1) Status update from SCOTUS Wisconsin Central working group.

PORTIONS CLOSED TO THE PUBLIC:

(1) Status update on internal personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Dated: June 6, 2019.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2019–12261 Filed 6–6–19; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86027; File No. SR–BX–2019–016]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(a) To Adopt Pricing for the Recently Adopted SCAR Routing Strategy

June 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt pricing for the recently adopted SCAR routing strategy,[3] which will be implemented on May 13, 2019.[4] In sum, SCAR is a routing option under which orders check the System [5] for available shares and simultaneously route to the other equity markets operated by Nasdaq, Inc., The Nasdaq Stock Market (''Nasdaq'') and Nasdaq PSX (''PSX'' and together with Nasdaq and the Exchange, the ''Nasdaq Affiliated Exchanges'').[6]

The Exchange initially filed the proposed pricing changes on May 13, 2019 (SR–BX–2019–014). On May 22,

[3] *See* BX Rule 4758(a)(1)(A)(x). *See also* Securities Exchange Act Release No. 85368 (March 20, 2019), 84 FR 11362 (March 26, 2019) (SR–BX–2019–004).

[4] *See* Equity Trader Alert #2019–29.

[5] The term ''System'' shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. *See* Rule 4701(a).

[6] If shares remain unexecuted after routing, they are posted on the Exchange's book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. *See* Rule 4758(a)(1)(A)(x).

2019, the Exchange withdrew that filing and submitted this filing.

The Exchange now proposes to adopt the following pricing for SCAR orders in securities listed on Nasdaq (''Tape C''), NYSE (''Tape A''), and on exchanges other than Nasdaq and NYSE (''Tape B'') (collectively, ''Tapes''), which execute on Nasdaq and PSX: [7]

- SCAR orders executed on Nasdaq will be assessed a charge of $0.00295 per share in any Tape securities priced at $1 or more per share.
- SCAR orders executed on PSX will be assessed a charge of $0.0029 per share in any Tape securities priced at $1 or more per share.
- SCAR orders executed on Nasdaq or PSX in any Tape securities priced below $1 per share will be assessed a charge of 0.30% of the total transaction cost.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the pricing structure proposed above for SCAR is reasonable, equitable, and not unfairly discriminatory because the fees are generally set at levels intended to incentivize members to use this new routing strategy while also allowing the Exchange to recoup the costs of providing routing services. For instance, the proposed $0.00295 per share charge for orders in any Tape securities priced at $1 or more per share that route to and execute on Nasdaq using the SCAR routing strategy is lower than the standard transaction charge of $0.0030 per share that would apply if the order executed directly on Nasdaq as the home exchange.[11] Similarly, the proposed $0.0029 per share charge for such orders that route to and execute on PSX is lower than the standard transaction charge of $0.0030 per share that would apply if the order executed directly on PSX as the home exchange.[12] As such, the proposed SCAR pricing is set at rates that make it more economical for members to use this routing strategy, especially for those members that do not already add and/or remove large amounts of volume on Nasdaq and PSX directly.

The Exchange also believes that the proposed SCAR credits and charges for all Tape securities priced at $1 or more per share are set at appropriate levels for the reasons that follow. The Exchange believes that the proposed $0.0029 charge for SCAR orders that route and execute on PSX is aligned with the $0.0029 charge currently assessed by Cboe BYX Exchange (''BYX''), Cboe BZX Exchange (''BZX''), and Cboe EDGA (''EDGA'') to their members using the ALLB, a routing strategy similar to SCAR in that ALLB routes between affiliated exchanges only,[13] to route orders to their affiliate, Cboe EDGX Exchange (''EDGX'').[14] The Exchange also believes that the proposed $0.00295 charge for SCAR orders that route and execute on Nasdaq is set at an appropriate level because it remains lower with the $0.0030 charge currently assessed by BYX, EDGX, and EDGA to their members using the ALLB routing strategy to route orders to their affiliate, BZX.[15] Given that Nasdaq is a more active market than PSX, the Exchange is proposing an incrementally higher routing charge for this market as opposed to the proposed charge for PSX because the Exchange believes that the higher volume on Nasdaq coupled with the proposed fee will be more effective in recouping the costs of providing routing services. The Exchange still believes that the proposed SCAR pricing for Nasdaq is set at an appropriate because it remains lower than the standard transaction charge of $0.0030 for accessing Nasdaq directly as well as the $0.0030 fee assessed by EDGX, EDGA, and BYX for their similar ALLB routing strategy, each as discussed above.

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to assess the proposed charge for SCAR orders executed on Nasdaq or PSX in any Tape securities priced below $1 per share because it is consistent with what it currently charges for all orders in securities priced at less than $1 per share that route and execute at an away venue.[16] Lastly, the Exchange believes that the proposed pricing changes are equitable and not unfairly discriminatory because they will apply uniformly to all members.

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 operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed pricing for SCAR orders are intended to recoup the Exchange's costs associated with providing routing services while providing incentives to members to make use of the Exchange's optional routing functionality. As discussed above, the Exchange believes that its proposed pricing remains competitive with other equity exchanges.[17] In addition, because the Exchange's routing services are the subject of

[7] Orders using the SCAR routing option that execute on the Exchange would be subject to the Exchange's standard fees and rebates. Currently, members that do not meet certain volume thresholds that would qualify them for a better rate (such as a liquidity removal credit) are assessed a standard transaction fee of $0.0003 per share for orders in any Tape securities priced at $1 or more per share that access liquidity on the Exchange. *See* Equity 7, Section 118(a).

[8] This is the same rate that the Exchange currently charges for all securities priced below $1 that route and execute at an away venue. *See* Equity 7, Section 118(b).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] This fee would apply unless the member qualifies for a better rate (such as a discounted fee or credit) by meeting certain volume thresholds. *See* Nasdaq Equity 7, Section 118(a).

[12] This fee would apply unless the member qualifies for a better rate (such as a discounted fee or credit) by meeting certain volume thresholds. *See* PSX Equity 7, Section 3, Order Execution and Routing.

[13] Unlike SCAR, which routes simultaneously to Nasdaq, PSX, and BX simultaneously in accordance with the System routing table, the ALLB routing strategy offered by BZX, BYZ, EDGA, and EDGX first checks the local book before being routed to the affiliated exchanges in accordance with the applicable system routing table. *See* Securities Exchange Act Release No. 85368 (March 20, 2019), 84 FR 11362 (March 26, 2019) (SR–BX–2019–004).

[14] *See* BYX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx;* BZX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx;* and EDGA Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga.*

[15] *See* EDGX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx. See supra* note 14.

[16] The Exchange currently charges 0.30% of the total transaction cost for all such orders. *See* Equity 7, Section 118(b).

[17] *See supra* notes 14 and 15.

competition, including price competition, from other exchanges and broker-dealers that offer routing services, as well as the ability of members to use their own routing capabilities, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2019–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2019–016. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2019–016 and should be submitted on or before July 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12086 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(3)(A)(ii).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86022; File No. SR–NASDAQ–2019–047]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Options Rules Under Chapter IV, Securities Traded on NOM

June 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 28, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, 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 relocate The Nasdaq Options Market LLC (''NOM'') Rules at Chapter IV (Securities Traded on NOM) under the Options 4 title in the Exchange's rulebook's (''Rulebook'') shell structure.[3]

The proposal also amends the rules as relocated to conform primarily to the equivalent options rules in the Nasdaq ISE, LLC (''ISE'') rulebook, as well as in one instance to the equivalent options rule in the Nasdaq PHLX LLC (''Phlx'') rulebook.

The proposal also amends Section1 of Chapter I of the NOM Rules to add several definitions. Finally, as a clean-up item, the proposal deletes Nasdaq Rule 5712 Alpha Index-Linked Securities because it is obsolete and the Exchange has never listed a product under this rule.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 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, Nasdaq BX, Inc.; Nasdaq PHLX LLC; Nasdaq ISE, LLC; Nasdaq GEMX, LLC; and Nasdaq MRX, LLC (''Affiliated Exchanges''). *See* Securities Exchange Act Release No. 82175 (November 29, 2017), 82 FR 57494 (December 5, 2017) (SR–NASDAQ–2017–125).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to relocate the rule text in Chapter IV (Securities Traded on NOM) to the Options 4 title in the Rulebook's shell structure. For ease of reference and the purposes of this filing, the relocated rules are herein described as the ''Options Listing Rules.''

The relocation of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the conformity of its processes with those of the Affiliated Exchanges,[4] and its goal of harmonizing and uniformizing its rules.

This proposed change is of a non-substantive nature. Moreover, the relocation of the Options Listing Rules will facilitate the use of the Rulebook by Members [5] of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general. The relocated rules will be amended to reflect the equivalent options rules in the ISE rulebook, but the changes are of a non-substantive nature.

The overarching goal is to align the NOM rules with those of the ISE. The Exchange is proposing to amend the rules for NOM, most notably the rule text in the Options Listing Rules concerning securities traded on NOM, but also adding several definitions to Section 1 of Chapter I.

The vast majority of the changes are technical changes and made throughout the Options Listing Rules. These minor changes are designed to conform the NOM rules to the equivalent ISE rules, as well as to increase the clarity of the rules. This includes some reorganization and renumbering within the Options Listing Rules' subsections to ensure they remain consistent.

The proposed changes that do not fit within the description above are listed below, beginning with changes to Chapter I General Provisions and followed by global changes to the Options Listing Rules. The changes are then broken down by section within the Options Listing Rules.

Proposed Changes to Chapter I

The Exchange is proposing to add definitions to ''Section 1 Definitions''. Specifically, the terms ''class'' ''series'' and ''underlying security'' will be added to Section 1(a) as (72), (73), and (74), respectively.[6] The Exchange believes that using the definitions for these terms as defined in the By-Laws of The Options Clearing Corporation (''OCC'') uniformly across Nasdaq, Inc.'s exchanges will help to align them. Providing uniform, clear and precise definitions for these terms will provide consistency, lessen potential confusion and add clarity for market participants.

Section 1 of Chapter I also will be amended to change ''NOM'' to ''the Exchange''.

Proposed Changes to the Options Listing Rules

Global Changes

As described above, the current Options Listing Rules will be amended throughout to change ''NOM'' to ''the Exchange''. This proposed change will add consistency throughout the chapter. ''Nasdaq Regulation'' also will be changed to ''the Exchange'' throughout the Options Listing Rules to update the appropriate references. Additionally, there are a number of minor changes made throughout the chapter to increase the clarity of the language, as well as renumbering within the section to ensure it remains consistent.

Proposed Changes to Section 1 Designation of Securities

This section will be amended to clarify that the options contracts that are designated by reference to the issuer of the underlying security can also be designated by reference to the name of the underlying foreign currency. Additionally, it can be referenced by not only the expiration month, but also by the expiration date.

Proposed Changes to Section 2 Rights and Obligations of Holders and Writers

This section will be amended to clarify that option contracts of any class of options dealt in on the Exchange are subject to the provisions of Options 4 and as set forth in the rules of the Clearing Corporation. This change clarifies the rights and obligations of holders and writers of option contracts.

Proposed Changes to Section 3 Criteria for Underlying Securities

Section 3(i) of the Options Listing Rules is being replaced and updated by incorporating the ISE version of the Exchange-Traded Fund (''ETF'') option listing rule.[7] Most of the changes in Section 3 of the Options Listing Rules simply result from reorganization within the section done to mirror the ISE rule and for greater clarity.

Section 3(k)(ii) of the Options Listing Rules will be amended to delete the language stating that Nasdaq will ''employ the same procedures to qualify underlying securities pursuant to this subsection (k) as it employs in qualifying underlying securities pursuant to other subsections of this Section 3.'' This deleted language is unnecessary since it is redundant given that each of the other subsections in Section 3 have procedures to qualify underlying securities plus it is also not reflected in the ISE rule version being adopted for this section.

Section 3(m) will be deleted since the definition of ''Partnership Unit'' is a remnant from the legacy Nasdaq ETF listing rule and is unnecessary since it has never been used. It also is not reflected in the ISE rule version being adopted for this section.

Proposed Changes to Section 4 Withdrawal of Approval of Underlying Securities

Section 4(a) of the Options Listing Rules will be amended to add flexibility for the Exchange to choose whether to decline new additional series of options on the underlying security previously approved.[8] Currently, this section restricts this, but flexibility is being added to give greater discretion about adding series and an exception also will be added that opening transactions by market makers executed to accommodate closing transactions of other market participants may be permitted. This will provide the public with greater protection since it will allow the Exchange to now decline new additional series of options on the underlying security previously approved that may not be in the best interests of the public.

Section 4(h)(ii) of the Options Listing Rules will be amended to change for options covering Exchange-Traded Fund Shares approved pursuant to Section 3(i)(iv)(2) of Options 4, following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, that there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days rather than as it is currently stated for 30 consecutive days. It is only on trading days that the information regarding 50 record and/or beneficial

[4] *Id.*

[5] As defined by Exchange Rule 0120(i).

[6] *See* OCC By-Laws Article I—Definitions C.(11); S.(12); and U.(3), respectively.

[7] *See* ISE Rule 502(h).

[8] *See* ISE Rule 503(a).

holders can be ascertained. Also, the change is consistent with the ISE rule.[9]

Proposed Changes to Section 6 Series of Options Contracts Open for Trading

Section 6(a) of the Options Listing Rules will be amended to add to note that exercise-price setting parameters adopted as part of the Options Listing Procedures Plan will be included in Supplementary Material .02 Select Provisions of Options Listing Procedures Plan.

In order to mirror the equivalent ISE rules,[10] Section 6(d)iv of the Options Listing Rules will be amended to incorporate, in large part, former Supplementary Material .03 within Section 6 itself. Also, Section 6(d)v of the Options Listing Rules will be relocated to .10 of the Supplementary Material to Section 6 of the Options Listing Rules.[11]

Supplementary Material .01(a) and (b) to Section 6 will detail the $1 Strike Price Interval Program and will replace .01 and .02 of the Supplementary Material to Section 6. Select Provisions of Options Listing Procedures Plan (''OLPP'') will be added as Supplementary Material .02 to Section 6.

Supplementary Material. 03 and .04 will detail the Short Term Option Series Program [12] and the Quarterly Options Series Program,[13] respectively, and each will be consistent with the equivalent ISE rule.

.05 of the Supplementary Material to Section 6 will be amended to cover the intervals between strike prices for Mini-Nasdaq 100 Index options series and will be consistent with the equivalent ISE rule.[14]

The first sentence of .06 Range Limitations for New Option Series of the Options Listing Rules has been deleted since it is covered in .02 of the Supplementary Material to Section 6, but the definition of OLPP has been moved to Section 6(a).

The introductory paragraph to .02 of the Supplementary Material to Section 6 of the Options Listing Rules details that the quote mitigation strategy and is codified in the OLPP. Subsection (a) states that the exercise price of each options series listed by the Exchange is fixed at a price per share that is reasonably close to the price of the underlying equity security, ETF or Trust Issued Receipt at or about the time the Exchange determines to list such series. Subsection (a)(ii) says that for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of a new series. The amended language will say that the price of the underlying security is measured by, for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of a new series rather than on the day the Exchange determines to list a new series. This change also mirrors the language in the ISE rules.[15]

Subsection (c) will be added to the Supplementary Material to Section 6 of the Options Listing Rules to make clear that subsection (a) of the Supplementary Material to Section 6 of the Options Listing Rules will not permit the listing of series that are otherwise prohibited by the rules of the Exchange or the OLPP. Additionally, to the extent the rules of the Exchange permit the listing of new series that are otherwise prohibited by the provisions of the OLPP, the provisions of the OLPP will govern. These changes are consistent with the ISE rules.[16]

Supplementary Material .16 U.S. Dollar-Settled Foreign Currency Options (formerly Supplementary Material .09) will be amended to reflect the language of the equivalent Phlx Rule since ISE does not have U.S. Dollar-Settled Foreign Currency Options.[17] Also, the references to the continuity rules here (formerly Supplementary Material .09(C)) and in Section 8. Long-Term Options Contracts have been deleted since quoting obligations for long term options has recently been updated and addressed in Phlx Rule 1081 and in NOM Chapter VII Section 6.

The Exchange is also proposing to delete Nasdaq Rule 5712. Alpha Index-Linked Securities.[18] This rule was adopted in 2012, but no product has ever been listed under it and the Exchange now considers it obsolete. The Exchange proposes to remove Nasdaq Rule 5712 from its rulebook and lessen any potential confusion for market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the relocation of its Options Listing Rules is a non-substantive change and is consistent with similar filings by the Exchange for the relocation of its rules.[21] As noted above, the relocation of the Options Listing Rules is part of the Exchange's continued effort to promote efficiency and the structural conformity of its processes with those of the Affiliated Exchanges,[22] and its goal of harmonizing and uniformizing its rules. Additionally, the relocation of the Options Listing Rules will facilitate the use of the Rulebook by Members [23] of the Exchange, who are members of other Affiliated Exchanges; other market participants; and the public in general.

The majority of the changes are also consistent with the ISE rulebook and the overarching goal is to align the NOM rules with those of the ISE. These changes include the change to subsection (a)(ii) of the Supplementary Material to Section 6 to say that the price of the underlying security is measured by, for new expiration months, the daily high and low of all prices reported by all national securities exchanges on the day the Exchange determines its preliminary notification of a new series rather than on the day the Exchange determines to list a new series.

Another such change is amending the Options Listing Rules to change for options covering Exchange-Traded Fund Shares approved pursuant to Section 3(i)(iv)(2) of Options 4, following the initial twelve-month period beginning upon the commencement of trading in the Exchange-Traded Fund Shares on a national securities exchange and are defined as NMS stock under Rule 600 of Regulation NMS, that there were fewer than 50 record and/or beneficial holders of such Exchange-Traded Fund Shares for 30 or more consecutive trading days rather than as it is currently stated for 30 consecutive days. It is only on trading days that the information

[9] *See* ISE Rule 503(h)(2).

[10] *See* ISE Rule 504(g).

[11] *See* ISE Supplementary Material .09 to Rule 504.

[12] *See* ISE Supplementary Material .02 to Rule 504.

[13] *See* ISE Supplementary Material .03 to Rule 504.

[14] *See* ISE Supplementary Material .04 to Rule 504.

[15] *See* ISE Rule 504A(b)(i)(2).

[16] *See* ISE Rule 504A(b)(v) and (vi).

[17] *See* Phlx Rule 1012(a)(iii).

[18] *See* Securities Exchange Act Release No. 67617 (August 8, 2012), 82 FR 57494 (August 14, 2012) (SR–NASDAQ–2012–068).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* footnote 3.

[22] *Id.*

[23] As defined by Exchange Rule 0120(i).

regarding 50 record and/or beneficial holders can be ascertained. This change serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that amending Section 4(a) of the Options Listing Rules to add flexibility for the Exchange to choose whether to decline new additional series of options on the underlying security previously approved will serve 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 since it will allow the Exchange to now decline new additional series of options on the underlying security previously approved that may not be in the best interests of the public.

The Exchange believe that adding definitions for the terms ''class'', ''series'', and ''underlying security'' to the NOM rulebook from the OCC By-Laws will help 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 through providing uniform, clear and precise definitions for these terms and increase consistency, lessen potential confusion and add clarity for market participants.[24]

The Exchange also believes that the elimination of Nasdaq Rule 5712 Alpha Index-Linked Securities is not a material change because it is obsolete and the Exchange has never listed a product under this rule.

As a result, the Exchange believes that the changes included in this filing serve 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 since the changes are intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules.

With respect to the proposed technical corrections to the rules, the Exchange believes that these changes are consistent with the Act because they will prevent investor confusion that may be caused by including in the Rules incorrect rule citations and defunct rule text.

[24] *See* footnote 6.

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 proposed change does not impose a burden on competition because, as previously stated, it (i) is of a non-substantive nature, (ii) is intended to harmonize the structure of the Exchange's rules with those of its Affiliated Exchanges, and (iii) is intended to organize the Rulebook in a way that it will ease the Members', market participants', and the general public's navigation and reading of the rules.

Consequently, the Exchange does not believe that the proposed changes implicate competition at all.

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[25] and subparagraph (f)(6) of Rule 19b–4 thereunder.[26]

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.

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–047 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–NASDAQ–2019–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–047, and should be submitted on or before July 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12093 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11:00 a.m. on Thursday, June 13, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: June 6, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–12328 Filed 6–6–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86026; File No. SR–NASDAQ–2019–045]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118(a)

June 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 7, Section 118(a), as described further below.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt pricing for the recently adopted SCAR routing strategy,[3] which will be implemented on May 13, 2019.[4] In sum, SCAR is a routing option under which orders check the System [5] for available shares and simultaneously route to the other equity markets operated by Nasdaq, Inc., the Nasdaq BX Equities Market (''BX'') and Nasdaq PSX (''PSX'' and together with BX and the Exchange, the ''Nasdaq Affiliated Exchanges'').[6]

The Exchange initially filed the proposed pricing changes on May 13, 2019 (SR–NASDAQ–2019–038). On May 22, 2019, the Exchange withdrew that filing and submitted this filing.

The Exchange now proposes to adopt the following pricing for SCAR orders in securities listed on Nasdaq (''Tape C''), NYSE (''Tape A''), and on exchanges other than Nasdaq and NYSE (''Tape B'') (collectively, ''Tapes''), which execute on BX and PSX: [7]

- SCAR orders executed on BX will be provided a credit of $0.0015 per share in Tape A and Tape C securities priced at $1 or more per share.
- SCAR orders executed on BX will be provided a credit of $0.0026 per share in Tape B securities priced at $1 or more per share.[8]
- SCAR orders executed on PSX will be assessed a charge of $0.0029 per

[3] *See* Nasdaq Rule 4758(a)(1)(A)(xv). *See also* Securities Exchange Act Release No. 85372 (March 20, 2019), 84 FR 11357 (March 26, 2019) (SR–NASDAQ–2019–013).

[4] *See* Equity Trader Alert #2019–29.

[5] The term ''System'' shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. *See* Rule 4701(a).

[6] If shares remain unexecuted after routing, they are posted on the Exchange's book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. *See* Rule 4758(a)(1)(A)(xv).

[7] Orders using the SCAR routing option that execute on the Exchange would be subject to the Exchange's standard fees and rebates. Currently, members that do not meet certain volume thresholds that would qualify them for a discounted charge or credit are assessed a standard transaction fee of $0.0030 per share for orders in any Tape securities priced at $1 or more per share that execute on the Exchange. *See* Equity 7, Section 118(a).

[8] The Exchange is proposing to provide a higher credit for SCAR orders executed on BX in Tape B securities priced at $1 or more than such orders in securities in Tape A and Tape C to coordinate with BX pricing. BX similarly gives higher credits for orders that access liquidity on BX in Tape B securities priced at $1 or more per share than such orders in securities in Tape A and Tape C. *See* BX Equity 7, Section 118(a).

share in all Tape securities priced at $1 or more per share.

• SCAR orders executed on BX or PSX in all Tape securities priced below $1 per share will be assessed a charge of 0.30% of the total transaction cost.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal is reasonable, equitable and not unfairly discriminatory because the pricing proposed above for SCAR is generally set at levels intended to incentivize members to use this new routing strategy while also allowing the Exchange to recoup the costs of providing routing services. For instance, under this proposal, members will be provided credits of $0.0015 (for securities in Tapes A and C) or $0.0026 (for Tape B securities) for orders in securities priced at $1 or more per share that route to and execute on BX using the SCAR strategy. In contrast, orders that execute directly on BX as the home exchange (*i.e.,* without using SCAR) are currently charged a standard transaction fee of $0.0003 per share.[12] Furthermore, the proposed $0.0029 per share charge for orders in any Tape securities priced at $1 or more per share that route to and execute on PSX using the SCAR routing strategy is lower than the standard transaction charge of $0.0030 per share that would apply if the order executed directly on PSX as the home exchange.[13] As such, the proposed SCAR pricing is set at rates that make it more economical for members to use this routing strategy, especially for those members that do not already add and/or remove large amounts of volume on PSX and BX directly.

The Exchange also believes that the proposed SCAR credits and charges for all Tape securities priced at $1 or more per share are set at appropriate levels for the reasons that follow. As noted above, the Exchange is proposing a higher credit for SCAR orders in Tape B securities than in securities in Tape A and Tape C to coordinate with BX pricing, which generally provides higher credits for BX members to remove liquidity from BX in Tape B securities priced at $1 or more per share than in Tape A and Tape C securities priced at $1 or more.[14] The Exchange therefore believes that the credits are set at appropriate levels because the proposed credit of $0.0026 for Tape B securities corresponds to the highest Tape B liquidity removal credit currently provided for accessing liquidity directly on BX.[15] As a means of offsetting the higher credit proposed for Tape B securities and also of recouping the costs of providing routing services, Exchange is proposing the credit of $0.0015 for Tapes A and C securities that is slightly lower than the highest Tapes A and C credit currently provided for accessing liquidity directly on BX.[16] The Exchange still believes that the proposed $0.0015 credit for Tape A and Tape C securities is set at an appropriate level because it remains within the range of the Tapes A and C liquidity removal credits currently provided for accessing liquidity directly on BX.[17] The proposed credit is also aligned with the $0.0015 rebate currently provided by Cboe BZX Exchange (''BZX''), Cboe EDGX Exchange (''EDGX''), and Cboe EDGA (''EDGA'') to their members using ALLB, a routing strategy similar to SCAR in that ALLB routes between affiliated exchanges only,[18] to route orders to their affiliate, Cboe BYX Exchange (''BYX'').[19] In addition, the proposed $0.0029 charge for SCAR orders that route and execute on PSX is similarly aligned with the $0.0029 charge currently assessed by BYX, BZX, and EDGA to their members using the ALLB routing strategy to route orders to their affiliate, EDGX,[20] while also remaining lower than the standard rate of $0.0030 per share presently charged for accessing liquidity directly on PSX, as discussed above.

The Exchange further believes that it is reasonable, equitable and not unfairly discriminatory to assess the proposed charge for SCAR orders executed on BX or PSX in any Tape securities priced below $1 per share because it is consistent with what it currently charges for all orders in securities priced at less than $1 per share that route and execute at an away venue.[21] Lastly, the Exchange believes that the proposed pricing changes are equitable and not unfairly discriminatory because they will apply uniformly to all members.

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 operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed pricing for SCAR orders are intended to recoup the Exchange's costs associated with providing routing services while providing incentives to members to make use of the Exchange's optional routing functionality. As discussed

[9] This is the same rate that the Exchange currently charges for all securities priced below $1 that route and execute at an away venue. *See* Equity 7, Section 118(b).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] This fee would apply unless the member qualifies for a better rate (such as a liquidity removal credit) by meeting certain volume thresholds. *See* BX Equity 7, Section 118(a).

[13] This fee would apply unless the member qualifies for a better rate (such as a discounted fee or credit) by meeting certain volume thresholds. *See* PSX Equity 7, Section 3, Order Execution and Routing.

[14] *See supra* note 8.

[15] *See* BX Equity 7, Section 118(a) (providing a $0.0026 credit for BX members entering orders in Tape B securities that access liquidity on BX if they meet certain criteria).

[16] These credits range from $0.0001 to $0.0018. *See* BX Equity 7, Section 118(a).

[17] *Id.*

[18] Unlike SCAR, which routes simultaneously to Nasdaq, PSX, and BX simultaneously in accordance with the System routing table, the ALLB routing strategy offered by BZX, BYZ, EDGA, and EDGX first checks the local book before being routed to the affiliated exchanges in accordance with the applicable system routing table. *See* Securities Exchange Act Release No. 85372 (March 20, 2019), 84 FR 11357 (March 26, 2019) (SR–NASDAQ–2019–013).

[19] *See* BZX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx;* EDGX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edgx;* and EDGA Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga.*

[20] *See* BYX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx. See supra* note 19.

[21] The Exchange currently charges 0.30% of the total transaction cost for all such orders. *See* Equity 7, Section 118(b).

above, the Exchange believes that its proposed pricing remains competitive with other equity exchanges.[22] In addition, because the Exchange's routing services are the subject of competition, including price competition, from other exchanges and broker-dealers that offer routing services, as well as the ability of members to use their own routing capabilities, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2019–045 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–NASDAQ–2019–045. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2019–045 and should be submitted on or before July 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12090 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

[22] *See supra* notes 19 and 20.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86025; File No. SR–Phlx–2019–23]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 3, Which Governs Pricing for Phlx Members Using the Nasdaq PSX System

June 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Equity 7, Section 3, which governs pricing for Phlx members using the Nasdaq PSX System (''PSX'').

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt pricing for the recently adopted SCAR routing strategy,[3] which will be implemented on May 13, 2019.[4] In sum, SCAR is a routing option under which orders check the System [5] for available shares and simultaneously route to the other equity markets operated by Nasdaq, Inc., the Nasdaq BX Equities Market (''BX'') and The Nasdaq Stock Market (''Nasdaq'' and together with BX and the Exchange, the ''Nasdaq Affiliated Exchanges'').[6]

The Exchange initially filed the proposed pricing changes on May 13, 2019 (SR–Phlx–2019–21). On May 22, 2019, the Exchange withdrew that filing and submitted this filing.

The Exchange now proposes to adopt the following pricing for SCAR orders in securities listed on Nasdaq (''Tape C''), NYSE (''Tape A''), and on exchanges other than Nasdaq and NYSE (''Tape B'') (collectively, ''Tapes''), which execute on Nasdaq and BX: [7]

- SCAR orders executed on Nasdaq will be assessed a charge of $0.00295 per share in all Tape securities priced at $1 or more per share.
- SCAR orders executed on BX will be assessed a credit of $0.0015 per share in Tape A and Tape C securities priced at $1 or more per share.
- SCAR orders executed on BX will be assessed a credit of $0.0026 per share in Tape B securities priced at $1 or more per share.[8]
- SCAR orders executed on Nasdaq or BX in all Tape securities priced below $1 per share will be assessed a charge of 0.30% of the total transaction cost.[9]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory because the pricing proposed above for SCAR is generally set at levels intended to incentivize members to use this new routing strategy while also allowing the Exchange to recoup the costs of providing routing services. For instance, under this proposal, members will be provided credits of $0.0015 (for securities in Tapes A and C) or $0.0026 (for Tape B securities) for orders in securities priced at $1 or more per share that route to and execute on BX using the SCAR strategy. In contrast, orders that execute directly on BX as the home exchange (*i.e.,* without using SCAR) are currently charged a standard transaction fee of $0.0003 per share.[12] Furthermore, the proposed $0.00295 per share charge for orders in any Tape securities priced at $1 or more per share that route to and execute on Nasdaq using the SCAR routing strategy is lower than the standard transaction charge of $0.0030 per share that would apply if the order executed directly on Nasdaq as the home exchange.[13] As such, the proposed SCAR pricing is set at rates that make it more economical for members to use this routing strategy, especially for those members that do not already add and/or remove large amounts of volume on Nasdaq and BX directly.

The Exchange also believes that the proposed SCAR credits and charges for all Tape securities priced at $1 or more per share are set at appropriate levels for the reasons that follow. As noted above, the Exchange is proposing a higher credit for SCAR orders in Tape B securities than in securities in Tape A and Tape C to coordinate with BX pricing, which generally provides higher credits for BX members to remove liquidity from BX in Tape B securities priced at $1 or more per share than in Tape A and Tape C securities priced at $1 or more.[14] The Exchange therefore believes that the credits are set at appropriate levels because the proposed credit of $0.0026 for Tape B securities corresponds to the highest Tape B liquidity removal credit currently provided for accessing liquidity directly on BX.[15] As a means of offsetting the higher credit proposed for Tape B securities and also of recouping the costs of providing routing services, Exchange is proposing the credit of $0.0015 for Tapes A and C securities that is slightly lower than the highest Tapes A and C credit currently provided for accessing liquidity directly on BX.[16] The Exchange still believes that the proposed $0.0015 credit for Tape A and Tape C securities is set at an appropriate level because it remains within the range of the Tapes A and C liquidity removal credits currently provided for accessing liquidity directly on BX.[17] The proposed credit is also aligned with the $0.0015 rebate currently provided by Cboe BZX Exchange (''BZX''), Cboe EDGX Exchange (''EDGX''), and Cboe EDGA (''EDGA'') to their members using ALLB, a routing strategy similar to SCAR in that ALLB routes between affiliated exchanges only,[18] to route orders to their affiliate, Cboe BYX Exchange (''BYX'').[19] The Exchange also believes

[3] *See* Phlx Rule 3315(a)(1)(A)(x). *See also* Securities Exchange Act Release No. 85366 (March 20, 2019), 84 FR 11345 (March 26, 2019) (SR–Phlx–2019–04).

[4] *See* Equity Trader Alert #2019–29.

[5] The term ''System'' shall mean the automated system for order execution and trade reporting owned and operated by the Exchange. *See* Rule 3301(a).

[6] If shares remain unexecuted after routing, they are posted on the Exchange's book or cancelled. Once on the book, should the order subsequently be locked or crossed by another market center, the System will not route the order to the locking or crossing market center. *See* Rule 3315(a)(1)(A)(x).

[7] Orders using the SCAR routing option that execute on the Exchange would be subject to the Exchange's standard fees and rebates. Currently, members that do not meet certain volume thresholds that would qualify them for a discounted charge or credit are assessed a standard transaction fee of $0.0030 per share for orders in any Tape securities priced at $1 or more per share that execute on the Exchange. *See* Equity 7, Section 3, Order Execution and Routing.

[8] The Exchange is proposing to provide a higher credit for SCAR orders executed on BX in Tape B securities priced at $1 or more than such orders in securities in Tape A and Tape C to coordinate with BX pricing. BX similarly gives higher credits for orders that access liquidity on BX in Tape B securities priced at $1 or more per share than such orders in securities in Tape A and Tape C. *See* BX Equity 7, Section 118(a).

[9] This is the same rate that the Exchange currently charges for all securities priced below $1 that route and execute at an away venue. *See* Equity 7, Section 3, Order Execution and Routing.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] This fee would apply unless the member qualifies for a better rate (such as a liquidity removal credit) by meeting certain volume thresholds. *See* BX Equity 7, Section 118(a).

[13] This fee would apply unless the member qualifies for a better rate (such as a discounted fee or credit) by meeting certain volume thresholds. *See* Nasdaq Equity 7, Section 118(a).

[14] *See supra* note 8.

[15] *See* BX Equity 7, Section 118(a) (providing a $0.0026 credit for BX members entering orders in Tape B securities that access liquidity on BX if they meet certain criteria).

[16] These credits range from $0.0001 to $0.0018. *See* BX Equity 7, Section 118(a).

[17] *Id.*

[18] Unlike SCAR, which routes simultaneously to Nasdaq, PSX, and BX simultaneously in accordance with the System routing table, the ALLB routing strategy offered by BZX, BYZ, EDGA, and EDGX first checks the local book before being routed to the affiliated exchanges in accordance with the applicable system routing table. *See* Securities Exchange Act Release No. 85366 (March 20, 2019), 84 FR 11345 (March 26, 2019) (SR–Phlx–2019–04).

[19] *See* BZX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx;* EDGX Fee Schedule, available at

Continued

that the proposed $0.00295 charge for SCAR orders that route and execute on Nasdaq is set at an appropriate level because it remains lower with the standard rate of $0.0030 per share currently charged for accessing liquidity directly on Nasdaq, as described above, as well as the $0.0030 fee currently assessed by BYX, EDGX, and EDGA to their members using the ALLB routing strategy to route orders to their affiliate, BZX.[20]

The Exchange further believes that it is reasonable, equitable, and not unfairly discriminatory to assess the proposed charge for SCAR orders executed on BX or Nasdaq in any Tape securities priced below $1 per share because it is consistent with what it currently charges for all orders in securities priced at less than $1 per share that route and execute at an away venue.[21] Lastly, the Exchange believes that the proposed pricing changes are equitable and not unfairly discriminatory because they will apply uniformly to all members.

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 operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the proposed pricing for SCAR orders are intended to recoup the Exchange's costs associated with providing routing services while providing incentives to members to make use of the Exchange's optional routing functionality. As discussed above, the Exchange believes that its proposed pricing remains competitive with other equity exchanges.[22] In addition, because the Exchange's routing services are the subject of competition, including price competition, from other exchanges and broker-dealers that offer routing services, as well as the ability of members to use their own routing capabilities, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2019–23 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–2019–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–23 and should be submitted on or before July 1,2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12092 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

https://markets.cboe.com/us/equities/membership/fee_schedule/edgx; and EDGA Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/edga.*

[20] *See* BYX Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/byx. See supra* note 19.

[21] The Exchange currently charges 0.30% of the total transaction cost for all such orders. *See* Equity 7, Section 118(b).

[22] *See supra* notes 19 and 20.

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86030; File No. SR–BOX–2019–17]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Rules Governing the Trading of Complex Qualified Contingent Cross Orders and Make a Modification to the Execution Requirements for Complex Customer Cross Orders

June 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 23, 2019, BOX Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to adopt rules governing the trading of Complex Qualified Contingent Cross Orders and make a modification to the execution requirements for Complex Customer Cross Orders. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing rules that will make existing functionality available to additional order types on BOX. Specifically, the Exchange is proposing rules to codify Complex Qualified Contingent Cross (''QCC'') Orders on the Exchange.[3] The Exchange notes that the proposed changes are similar to the rules of other exchanges.[4] The Exchange also proposes to modify the requirements for Complex Customer Cross Orders on the Exchange. Lastly, the Exchange is proposing to expand certain Complex Order protections to Complex QCC Orders.

Complex Customer Cross Orders

First, the Exchange is proposing to modify requirements related to Complex Customer Cross Orders.[5] The Exchange notes that the only modification being made is that each leg of a Complex Customer Cross Order must execute at least $0.01 better than any Public Customer Order on the BOX Book. All other requirements remain the same as the current functionality in place.

The Exchange uses the same crossing mechanism for the processing and execution of Complex Customer Cross Orders that is used for Customer Cross Orders in the regular market. Accordingly under Proposed Rule 7110(c)(7), Complex Customer Cross Orders are automatically executed upon entry provided that the execution (i) is at least $0.01 better than any Public Customer Complex Order on the Complex Order Book; (ii) is at least $0.01 better than the cBBO; (iii) is at or better than any non-Public Customer Complex Order on the Complex Order Book; (iv) is at or between the cNBBO as defined in Rule 7240(a)(3) and further provided that each leg is at least $0.01 better than any Public Customer Order on the BOX Book.

Complex QCC Orders

Next, the Exchange is proposing to add text related to Complex QCC Orders. Pursuant to proposed Rule 7240(b)(4)(iv), a Complex QCC Order is comprised of an originating Complex Order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade as defined in IM–7110–2 [6] coupled with a contra-side Complex Order or orders totaling an equal number of contracts.[7]

The Exchange uses the same crossing mechanism for the processing and execution of Complex QCC Orders that is used for QCC Orders in the regular market.[8] Accordingly, proposed Rule 7110(c)(8) shall govern trading of Complex QCC Orders, as defined in Rule 7240(b)(4)(iv), on BOX. Proposed Rule 7110(c)(8) describes the execution price requirements that are specific for Complex QCC Orders.[9] Specifically, Complex QCC Orders are automatically executed upon entry provided that the execution (i) is at least $0.01 better than any Public Customer Complex Order on the Complex Order Book; (ii) is at least $0.01 better than the cBBO; (iii) is at or better than any non-Public Customer Complex Order on the Complex Order Book and further provided that each option leg executes at a price that is at least $0.01 better than any Public Customer Order on the BOX Book and each option leg executes at or between the NBBO. The purpose of the requirement that the execution must be at least $0.01 better than the cBBO is to ensure that the Exchange is respecting the implied market price. The purpose of the requirement that each option leg must be at least $0.01 better than any

[3] *See https://boxoptions.com/assets/RC-2017-11-CC_QCC_cNBBO-July-10-Implementation-1.pdf.*

[4] *See* Nasdaq ISE, LLC (''ISE'') Rule 721(d). *See also* MIAX Rules 515(h)(4) and 518(b)(6).

[5] Rule 7240(b)(4)(iii) defines a Complex Customer Cross Order as a type of Complex Order which is comprised of one Public Customer Complex Order to buy and one Public Customer Complex Order to sell (the same strategy) at the same price and for the same quantity.

[6] A ''qualified contingent trade'' is a transaction consisting of two or more component orders, executed as agent or principal, where: (1) At least one component is an NMS Stock, as defined in Rule 600 of Regulation NMS under the Exchange Act; (2) all components are effected with a product or price contingency that either has been agreed to by all the respective counterparties or arranged for by a broker-dealer as principal or agent; (3) the execution of one component is contingent upon the execution of all other components at or near the same time; (4) the specific relationship between the component orders (*e.g.,* the spread between the prices of the component orders) is determined by the time the contingent order is placed; (5) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or cancelled; and (6) the transaction is fully hedged (without regard to any prior existing position) as a result of other components of the contingent trade. *See* IM–7110–2.

[7] Proposed Rule 7240(b)(4)(iv) is based on MIAX Rule 518(b)(6) and ISE Rule 715(j).

[8] *See* Securities Exchange Act Release No. 80661 (May 11, 2017), 82 FR 22682 (May 17, 2017) (SR–BOX–2017–14). The Exchange notes that regular QCC Orders on BOX are allowed to execute automatically on entry without exposure provided the execution: (1) Is not at the same price as a Public Customer Order on the BOX Book; and (2) is at or between the NBBO.

[9] Proposed Rule 7110(c)(8) is based on ISE Rule 721(d).

Public Customer Complex Order on the Complex Order Book is to ensure that the Complex QCC Order does not trade in front of any resting Public Customer Complex Orders. Similarly, the purpose of the requirement that each option leg be at least $0.01 better than any Public Customer Order on the BOX Book is to ensure that the Complex QCC Order does not trade in front of any resting regular Public Customer Orders. The purpose of the requirement that the individual options legs of the Complex QCC Order be executed at or between the NBBO is to ensure that the execution price of each option leg is within the best price available in the market and is in line with the requirement that simple QCC Orders must execute at or within the NBBO.

The system does not consider the NBBO price for the stock component because the Exchange does not execute the stock component; the Exchange executes the option components at a net price and ensures that, among other things, the execution (i) is at least $0.01 better than any Public Customer Complex Order on the Complex Order Book; (ii) is at least $0.01 better than the cBBO; (iii) is at or better than any non-Public Customer Complex Order on the Complex Order Book; (iv) each option leg executes $0.01 better than any Public Customer Order on the BOX Book; and (v) each option leg executes at or between the NBBO.

The system will reject a Complex QCC Order if, at the time of receipt of the Complex QCC Order, the strategy is subject to an ongoing auction (including COPIP, Facilitation, and Solicitation auctions) or there is an exposed order on the strategy pursuant to Rule 7240(b)(3)(B). The purpose of this provision is to maintain an orderly market by avoiding the execution of Complex QCC Order with components that are involved in other system functions that could affect the execution price of the Complex QCC Order, and by avoiding concurrent processing on the Exchange involving the same strategy.

Proposed Rule 7110(c)(8)(A) states that Complex QCC Orders will be automatically cancelled if they cannot be executed. Proposed Rule 7110(c)(8)(B) provides that Complex QCC Orders may only be entered in the minimum trading increments applicable to Complex Orders under Rule 7240(b)(1).

The following example illustrates the execution of a Complex QCC Order:

Example 1—Execution of a Complex QCC Order

BOX Leg A Book: 6.00–6.60 (no Public Customer interest)
BOX Leg B Book: 3.00–3.30 (no Public Customer interest)
Leg A NBBO: 6.00–6.60
Leg B NBBO: 3.00–3.30

Strategy: Buy A Call, Sell B Call

The cBBO is 2.70–3.60
The cNBBO is 2.70–3.60

The Complex Order Book contains a broker-dealer order to sell the strategy at 3.29.

The Exchange receives a Complex QCC Order for the simultaneous purchase and sale of the strategy at a net price of 3.29, 1,000 times. Since the order can be executed at or between the NBBO for each leg of the strategy, is not at a worse price than the non-Public Customer Order on the Complex Order Book, is at least $0.01 better than the cBBO, is not at the same price as a Public Customer Order on the BOX Book, and the order size is met, the Complex QCC Order is automatically executed upon entry.

Example 2—Execution of a Complex QCC Order

BOX Leg A Book: 6.00–6.60 (no Public Customer interest)
BOX Leg B Book: 3.00–3.30 (Public Customer Order to sell at 3.30)
Leg A NBBO: 6.00–6.60
Leg B NBBO: 3.00–3.30

Strategy: Buy A Call, Sell B Call

The cBBO is 2.70–3.60
The cNBBO is 2.70–3.60

The Exchange receives a Complex QCC Order for the simultaneous purchase and sale of the strategy at a net price of 3.30, 1,000 times. Since there is a Public Customer Order on the BOX Book for Leg B to sell at 3.30 and the incoming Complex QCC Order is not at least $0.01 better than the resting Public Customer Order on the BOX Book, the Complex QCC Order is rejected.

The proposed rules governing Complex QCC Orders are based on the rules of another exchange with certain differences.[10] The Exchange is proposing the additional requirement that the execution price is at or better than any non-Public Customer Complex Order on the Complex Order Book. The Exchange believes that this additional requirement is reasonable because the Exchange is respecting resting Complex Orders. Further, the Exchange proposes that the execution is at least $0.01 better than the cBBO. The Exchange believes that this additional requirement is reasonable because the Exchange is respecting the implied market price. Further, the Exchange believes that this additional requirement will encourage Participants to add liquidity because incoming orders will not trade ahead of resting interest on the BOX Book. Lastly, MIAX rejects a Complex QCC Order if, at the time of receipt, any component of the strategy is subject to a PRIME Auction, a Route Timer, or liquidity refresh pause. The Exchange is not proposing the same conditions.[11] With respect to not rejecting when a component is subject to an auction, the Exchange notes that this approach is in line with the treatment of a COPIP when there is an ongoing PIP on a component of the Complex Order. Specifically, the Exchange will accept Complex Orders designated for the COPIP where there is a PIP on an individual component.[12] Further, the Exchange notes that orders on the regular book are protected by the fact that the execution price must be at least $0.01 better than the cBBO. Additionally, in order to ensure orderly markets involving multiple Complex Orders with common components, the Exchange is proposing additional circumstances in which a Complex QCC Order will be rejected, specifically, when there is an exposed order on the strategy, there is an ongoing Facilitation or Solicitation auction on the strategy or when there is a COPIP.

Lastly, the Exchange proposes to expand certain Complex Order protections to Complex QCC Orders. Specifically, the Exchange proposes to amend Rule IM–7240–1(a)(5) and IM–7240–1(b)(5) to apply these price protection checks to Complex QCC Orders. The Exchange notes that another options exchange has similar price checks.[13]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[14] in general, and Section 6(b)(5) of the Act,[15] 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

[10] *See* supra note 4.

[11] BOX notes that it does not have either the Route Timer or liquidity refresh pause features on the Exchange. As such, BOX is not proposing to include these features under the Proposal.

[12] *See* IM–7245–2.

[13] *See* Chicago Board Options Exchange, Incorporated (''Cboe'') Interpretations and Polices .08(c) and (g) to Rule 6.53C.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed change requiring each leg of a Complex Customer Cross order to execute at least $0.01 better than any Public Customer Order on the BOX Book promotes just and equitable principles of trade and protects investors and the public interest by further protecting resting Public Customer interest.

The proposal to amend Rules 7110 and 7240 to codify rules covering Complex QCC Orders is consistent with Section 6(b)(5) of the Act because this proposal promotes just and equitable principles of trade and protects investors and the public interest by providing increased opportunities for the execution of Complex Orders. The Exchange believes that requiring the execution to be at least $0.01 better than any Public Customer Complex Order on the Complex Order Book protects investors and the public interest as it will ensure that the Complex QCC Order does not trade in front of any resting Public Customer Complex Orders. The Exchange also believes that requiring the execution to be at least $0.01 better than the cBBO will further protect investors as it ensures that the implied market prices are respected. Further, the Exchange believes that requiring the individual legs of a Complex QCC Order to execute at least $0.01 better than any resting Public Customer interest further protects Public Customers on the Exchange. Lastly, the Exchange believes that requiring each option leg to execute at or between the NBBO protects investors and the public interest because it ensures that the execution price of each option leg is within the best price available in the market and is in line with the requirement that simple QCC Orders must execute at or within the NBBO.

The Exchange also believes that the proposed Complex QCC rules will benefit Participants and the marketplace as a whole by adopting rules that allow for the trading of these types of orders on the Exchange. The Exchange believes the proposed rules for Complex QCC Orders remove impediments to and perfect the mechanism of a free and open market and a national market system and will result in more efficient trading and enhance the likelihood of the Complex Orders executing at the best prices by providing additional order types resulting in potentially greater liquidity available for trading on the Exchange.

The proposed rule change will provide rules that make existing functionality available to an additional order type. Providing rules that make QCC available for Complex Orders removes impediments to and perfects the mechanisms of a free and open market and a national market system because Participants will be given additional ways in which they can execute Complex Orders.

The proposed rule change will protect investors and the public interest by assuring the existing priority and allocation rules applicable to the processing and execution of QCC Orders and Complex Orders remains consistent with the processing and execution of these order types, unless otherwise specifically set forth in the rules.

The system does not consider the NBBO price for the stock component because the Exchange does not execute the stock component; the Exchange executes the option components at a net price and ensures that the net execution (i) is at least $0.01 better than any Public Customer Complex Order on the Complex Order Book; (ii) is at least $0.01 better than the cBBO; (iii) is at or better than any non-Public Customer Complex Order on the Complex Order Book; (iv) each option leg executes $0.01 better than any Public Customer Order on the BOX Book; and (v) each option leg executes at or between the NBBO.

The Exchange believes that the proposal to reject a Complex QCC Order at the time of receipt of the order when the strategy is subject to an ongoing auction (including COPIP, Facilitation and Solicitation auctions), or there is an exposed order on the strategy, removes impediments to and perfects the mechanism of a free and open market by ensuring orderly markets involving multiple complex orders with common components.

The proposed rule change to implement a debit/credit check for Complex QCC Orders is consistent with the Act. With the use of debit/credit checks, the Exchange can further assist with the maintenance of a fair and orderly market by mitigating the potential risks associated with Complex Orders trading at prices that are inconsistent with their strategies (which may result in executions at prices that are extreme and potentially erroneous), which ultimately protects investors. This proposed implementation of the debit/credit check promotes just and equitable principles of trade, as it is based on the same general option and volatility pricing principles which the Exchange understands are used by market participants in their option pricing models.

Additionally, the Exchange also believes that calculating a maximum price for true butterfly spreads, vertical spreads, and box spreads will assist with the maintenance of fair and orderly markets by helping to mitigate the potential risks associated with Complex QCC Orders trading at extreme and potentially erroneous prices that are inconsistent with particular Complex Order strategies. Further, the Exchange notes that the maximum price is designed to mitigate the potential risks of executions at prices that are not within an acceptable price range, as a means to help mitigate the potential risks associated with Complex Orders trading at prices that are inconsistent with their strategies, in addition to the debit/credit check. As such, the proposed rule change is designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule is being proposed as a competitive response to the rules of other exchanges.[16] Additionally, the proposed rule change is intended to promote competition by adding rules for a new order type that enable Participants to execute Complex Orders on the Exchange. The Exchange believes that this enhances inter-market competition by enabling the Exchange to compete for this type of order flow with other exchanges that have similar rules and functionalities in place. Further, the Exchange does not believe the proposed change will impose a burden on intramarket competition because it is available to all Participants.

The Exchange does not believe that the proposed Complex Order protections will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the rules of other exchanges.[17] Additionally, the Exchange believes the proposed rule change is beneficial to Participants as it will provide increased protections that will prevent the execution of certain Complex Orders that were entered in

[16] *See supra* note 4.

[17] *Id.*

error. The Exchange believes the proposal is pro-competitive and should serve to attract additional Complex Orders to the Exchange. Further, the Exchange does not believe the proposed change will impose a burden on intramarket competition because the price protections are available to all Complex QCC Orders.

For the reasons stated, the Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and the Exchange believes the proposed change will, in fact, enhance competition.

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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–17 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–BOX–2019–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2019–17, and should be submitted on or before July 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12091 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86024; File No. SR–MIAX–2019–26]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 519, MIAX Order Monitor

June 4, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend Exchange Rule 519, MIAX Order Monitor, in order to harmonize its rule to the rules of the Exchange's affiliate, MIAX Emerald, LLC (''MIAX Emerald'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 519, MIAX Order Monitor, to align its behavior pertaining to the handling of limit orders to buy and limit orders to sell to that of MIAX Emerald.

Current Functionality

In order to avoid the occurrence of potential obvious or catastrophic errors on the Exchange the MIAX Order Monitor will prevent certain orders from executing or being placed on the Book at prices outside pre-set standard limits. Beginning after the Opening Process–[3] is complete, the MIAX Order Monitor will be operational each trading day until the close of trading.[4]

Subsection (3) of paragraph (a), Limit Orders to Buy or Sell, of the Rule, states that the System[5] will reject an incoming limit order that crosses the contra-side NBBO[6] by at least 50% or $2.50, whichever is less. The following examples illustrate those situations where lower priced limit orders are rejected because they cross the NBBO by at least 50%: (A) If the NBBO on the offer side is $4.00, an order to buy options for $6.00 or more will be rejected; and (B) if the NBBO on the bid side is $4.00, an order to sell options for $2.00 or less will be rejected. Additionally, the following are examples of those situations where higher priced limit orders are rejected because they cross the NBBO by $2.50 or more: (A) If the NBBO on the offer side is $12.00, an order to buy options for $14.50 or more will be rejected; and (B) if the NBBO on the bid side is $12.00, an order to sell options for $9.50 or less will be rejected. Notwithstanding the foregoing, with respect to limit orders to sell, the MIAX Order Monitor will not be activated when the NBBO on the bid side is equal to or less than $0.25. Thus, the System will accept all limit orders to sell regardless of price during this time.

Proposal

The Exchange proposes to amend current subsection (3) to create a separate subsection for limit orders to buy (proposed subsection (3)), and for limit orders to sell (proposed subsection (4)). The Exchange proposes to introduce a new threshold for limit orders to buy which will provide that for options with a National Best Offer (''NBO'') less than or equal to $0.50 the System will reject an incoming limit order that has a limit price that is equal to or greater than the NBO Price by $0.25. The Exchange believes that creating separate subsections dedicated to limit orders to buy and limit orders to sell will add clarity and additional detail to the Exchange's Rule. Additionally, the Exchange proposes to provide new examples demonstrating the operation of the MIAX Order Monitor functionality for both limit orders to buy and limit orders to sell.

Proposed subsection (3), Limit Orders to Buy, will provide that for options with a National Best Offer (''NBO'') greater than $0.50 the System will reject an incoming limit order that has a limit price equal to or greater than the NBO by the lesser of (i) $2.50, or (ii) 50% of the NBO price. The proposed rule will also provide that for options with an NBO less than or equal to $0.50 the System will reject an incoming limit order that has a limit price that is equal to or greater than the NBO price by $0.25.

The proposed examples provide that (A) if the NBO is $12.00 an incoming limit order to buy options for $14.50 or more will be rejected; and (B) if the NBO is $0.10 an incoming limit order to buy options for $0.15 will not be rejected; whereas if the NBO is $0.10 an incoming limit order to buy options for $0.35 will be rejected as the limit price of the order is $0.25 greater than the NBO. Proposed example A provides an example of an order being rejected when the order's limit price ($14.50) is greater than the NBO ($12.00) by the lesser of $2.50 or 50% of the NBO price ($6.00). Proposed example B demonstrates how the protection works when the NBO of the option is $0.50 or less. If the NBO is $0.10 an incoming limit order to buy options for $0.15 will not be rejected as the order's limit price is not $0.25 greater ($.35) than the NBO price.

Proposed subsection (4) Limit Orders to Sell, will provide that for options with a National Best Bid (''NBB'') equal to or greater than $0.25 the System will reject an incoming limit order that has a limit price equal to or less than the NBB by the lesser of (i) $2.50, or (ii) 50% of the NBB price. For options with an NBB of $0.25 or less the System will accept any incoming limit order.

Additionally, the proposed rule will include examples to demonstrate the operation of the rule in different circumstances. The proposed examples provide that (A) if the NBB is $12.00 an incoming limit order to sell options for $9.50 or less will be rejected; and (B) if the NBB is $0.30 an incoming limit order to sell options for $0.15 will be rejected; whereas if the NBB is $0.30 an incoming limit order to sell options for $0.20 will not be rejected as the limit price of the order is not less than 50% of the NBB price. Proposed example A provides an example of an order being rejected when the order's limit price ($9.50) is less than the NBB ($12.00) by the lesser of $2.50 or 50% of the NBB price ($6.00). Proposed example B demonstrates how the protection works when the NBB of the option is greater than $0.25.

The Exchange believes its proposed changes provide additional detail and clarity to the Exchange's rules concerning order protections for incoming limit orders to buy and incoming limit orders to sell.

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 60 days following the operative date of the proposed rule. The implementation date will be no later than 60 days following the issuance of the Regulatory Circular.

2. Statutory Basis

MIAX Options believes that its proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by establishing thresholds for the handling of incoming limit orders to buy and sell, and by providing examples describing the System's behavior in various circumstances. Currently the Exchange's

[3] *See* Exchange Rule 503(f).

[4] *See* Exchange Rule 519(a).

[5] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[6] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

Rule discusses the operation of the MIAX Order Monitor on incoming limit orders to buy or incoming limit orders to sell in a single paragraph.[9] The Exchange believes providing separate paragraphs in the Rule specifically discussing the MIAX Order Monitor process for incoming limit orders to buy (proposed paragraph (a)(3)) and for incoming limit orders to sell (proposed paragraph (a)(4)), promotes the protection of investors and the public interest by providing additional detail and clarity in the rule. It is in the best interest of investors and the public for rules to be accurate and precise to avoid the potential for confusion. Further, the Exchange believes that providing a clear line of delineation for the treatment of limit orders to buy when the NBO is less than or equal to $0.50, and for limit orders to sell when the National Best Bid (''NBB'') is less than $0.25 benefits investors and the public by establishing clear and unambiguous thresholds regarding the acceptance or rejection of orders.

The Exchange believes that the proposed changes to its rulebook add additional detail and provide further clarification to Members,[10] investors, and the public, regarding the Exchange's order monitoring functionality. The Exchange believes it is in the interest of investors and the public to accurately describe the behavior of the Exchange's System in its rules as this information may be used by investors to make decisions concerning the submission of their orders. Transparency and clarity are consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System.

The Exchange believes that the proposed changes promote just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest by providing additional detail and clarity in the Exchange's rules. Further, the Exchange's proposal provides transparency and clarity in the rules and is consistent with the Act because it removes impediments to and helps perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by accurately describing the behavior of the Exchange's System. In particular, the Exchange believes that the proposed rule changes will provide greater clarity to Members and the public regarding the Exchange's Rules, and it is in the public interest for rules to be accurate and concise so as to eliminate the potential for confusion.

Additionally, the Exchange believes that although MIAX Options rules may, in certain instances, intentionally differ from MIAX Emerald rules, the proposed changes will promote uniformity with MIAX Emerald with respect to rules that are intended to be identical. MIAX Options and MIAX Emerald may have a number of Members in common, and where feasible the Exchange intends to implement similar behavior to provide consistency between MIAX Options and MIAX Emerald so as to avoid confusion among Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to add additional clarity and detail to the Exchange's rules.

The Exchange does not believe that the proposed rule change will impose any burden on inter-market competition as the Rules apply equally to all Exchange Members. The proposed rule change is not a competitive filing and is intended to enhance the protection of investors by ensuring that the rule clearly and accurately describes the scenarios when a limit order to buy or a limit order to sell will be rejected by the Exchange's System. Additionally, the proposed rule change provides examples of hypothetical scenarios to provide additional detail and clarity to the Exchange's rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov*. Please include File Number SR–MIAX–2019–26 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–MIAX–2019–26. 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

[9] *See* Exchange Rule 519(a)(3).

[10] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

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–MIAX–2019–26 and should be submitted on or before July 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12089 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86023; File No. SR–CboeBZX–2019–015]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To List and Trade Units of Each of (i) Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy ETNs; (ii) Cboe Vest S&P 500® Enhanced Growth Strategy ETNs; (iii) Cboe Vest S&P 500® Accelerated Return Strategy ETNs; and (iv) Cboe Vest S&P 500® Power Buffer Strategy ETNs Under Rule 14.11(d), Equity Index-Linked Securities

June 4, 2019.

On March 4, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade units of each of (i) the Cboe Vest S&P 500® Buffer Enhanced Growth Protect Strategy ETNs; (ii) the Cboe Vest S&P 500® Enhanced Growth Strategy ETNs; (iii) the Cboe Vest S&P 500® Accelerated Return Strategy ETNs; and (iv) the Cboe Vest S&P 500® Power Buffer Strategy ETNs under BZX Rule 14.11(d), which governs the listing and trading of Equity Index-Linked Securities on the Exchange.

The proposed rule change was published for comment in the **Federal Register** on March 22, 2019.[3] On May 3, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5]

On June 3, 2019, BZX withdrew the proposed rule change (SR–CboeBZX–2019–015).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12097 Filed 6–7–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85347 (Mar. 18, 2019), 84 FR 10863 (Mar. 22, 2019).

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85766 (May 3, 2019), 84 FR 20453 (May 9, 2019).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15973 and #15974; OKLAHOMA Disaster Number OK–00130]

Presidential Declaration of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4438–DR), dated 06/01/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 05/07/2019 and continuing.

DATES: Issued on 06/01/2019.

Physical Loan Application Deadline Date: 07/31/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/02/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/01/2019, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Muskogee, Tulsa, Wagoner

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Cherokee, Creek, Haskell, Mayes, Mcintosh, Okmulgee, Osage, Pawnee, Rogers, Sequoyah, Washington

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15973B and for economic injury is 159740.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12159 Filed 6–7–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0335]

Serra Capital (SBIC) III, L.P.; Notice Seeking Exemption Under the Small Business Investment Act, Conflicts of Interest

Notice is here given that Serra Capital (SBIC) III, L.P., 2021 South First Street, Suite 206, Champaign, IL 61821, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern,

has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Serra Capital (SBIC) III, L.P. provides convertible debt financing to SERIONX, INC. 14301 N 87th Street, Suite 116, Scottsdale, Arizona 85260.

The financing is brought within the purview of § 107.730(a) of the Regulations because Serra Capital III, L.P. has previously invested $400,000 of convertible debt in SERIONX, INC. As this entity is considered an associate of Serra Capital (SBIC) III, L.P., this transaction Requires a prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

A. Joseph Shepard,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2019–12135 Filed 6–7–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15975 and #15976; LOUISIANA Disaster Number LA–00092]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Louisiana

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–4439–DR), dated 06/03/2019.

Incident: Severe Storms and Tornadoes.

Incident Period: 04/24/2019 through 04/25/2019.

DATES: Issued on 06/03/2019.

Physical Loan Application Deadline Date: 08/02/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/03/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes: Lincoln, Morehouse, Union

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15975B and for economic injury is 159760.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12161 Filed 6–7–19; 8:45 am]

BILLING CODE 8206–03–P

DEPARTMENT OF STATE

[Public Notice: 10789]

Notice and Request for Comments on the Implications of Access and Benefit-Sharing (ABS) Regimes on Global Health and Biomedical Research

AGENCY: Department of State.

SUMMARY: In order to inform U.S. Government policy and international engagement, the U.S. Department of State (DOS) invites submission of comments from the public, academia, relevant industries, and other interested stakeholders on the implications of Access and Benefit-Sharing (ABS) regimes on global health and biomedical research. In particular, DOS invites comments related to the effects of Nagoya Protocol and other ABS implementation on public health systems. The Department will hold at least two public meetings to discuss these issues, on June 25 and September 20, 2019. Any future Meetings will be announced at *https://www.state.gov/bureaus-offices/under-secretary-for-economic-growth-energy-and-the-environment/bureau-of-oceans-and-international-environmental-and-scientific-affairs/office-of-international-health-and-biodefense/.*

DATES: Written comments are welcome before each of the two planned public meetings referenced above and will be reviewed periodically beginning July 10, 2019.

ADDRESSES: One submission per meeting is welcome, with no more than 10 pages of single-spaced text including relevant examples with no more than one page per example. Submissions should be made via the internet at *www.regulations.gov* docket number DOS–2019–0016. For alternatives to online submissions, please contact Dr. Jennifer Seedorff at (202) 647–3017 or *seedorffje@state.gov.* Note that relevant comments submitted to *regulations.gov* will be posted without editing and will be available to the public; therefore, business-confidential information should be clearly identified as such and submitted by email. The public is strongly encouraged to file submissions electronically rather than by facsimile or mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding the submission of comments should be directed to Dr. Jennifer Seedorff (202) 647–3017, *seedorffje@state.gov.*

SUPPLEMENTARY INFORMATION: Representatives from the Department of State will review written submissions and share them, as appropriate, with staff from other Federal Agencies to inform U.S. Government policy and our international engagements on these issues. U.S. officials may contact individuals making submissions for further information or explanation. In particular, we seek comments on and specific examples of the impacts of other countries' implementation of the Nagoya Protocol or other ABS measures on such issues as: International research collaborations, international pathogen sample sharing, infectious disease research, including influenza, Zika and other diseases, pandemic and epidemic preparedness and response, medical countermeasure product development efforts, investor interest in vaccine development, and other aspects. We would also welcome views on what the World Health Organization (WHO), other UN bodies, and non-governmental organizations can do to effectively protect public health equities in the context of the Nagoya Protocol and

other national level ABS implementation. We also welcome examples of:

(1) Monetary or non-monetary benefits to the global public health system that are facilitated by international sharing of pathogens, biospecimens, pathogen genetic sequence data, and/or relevant metadata.

(2) Influenza-specific issues and/or examples related to the items described above or other items that could affect global influenza pandemic preparedness and response or efforts to combat seasonal influenza.

(3) Non-ABS challenges and barriers with sharing pathogens internationally or that otherwise have significant implications for global pandemic or epidemic preparedness and response efforts that might merit additional attention or analysis.

Background: Biological threats to the U.S. homeland—whether as the result of deliberate attack, accident, or a natural outbreak—are growing and require actions to address them at their source. Naturally emerging outbreaks of viruses such as Ebola and Severe Acute Respiratory Syndrome (SARS), as well as the deliberate 2001 anthrax attacks in the United States, demonstrated the impact of biological threats on national security by taking lives, generating economic losses, and contributing to a loss of confidence in government institutions. To effectively prepare for or respond to epidemic and pandemic infectious disease threats, the United States government and other public health actors need rapid, systematic, and consistent access to both information and samples from outbreaks, including pathogens, related clinical material, pathogen genetic sequence data, epidemiological data, and relevant metadata. The Global Influenza Surveillance and Response System and Pandemic Influenza Preparedness Framework facilitate the sharing of samples of influenza viruses and access to vaccines and other benefits. WHO is engaging with Member States, stakeholders, and other UN bodies to better understand the impacts of Nagoya Protocol and other ABS measures on public health, including the sharing of influenza and non-influenza pathogens.

Several meetings are planned in association with this request for written submissions.

Time and Date: Two initial meetings are planned on Tuesday, June 25 and Friday, September 20, 2019. Each meeting will begin at 1:30 p.m. EDT and last for up to two hours. If the Department decides to hold additional public meetings, the time and place will be announced on the Department website: *https://www.state.gov/bureaus-offices/under-secretary-for-economic-growth-energy-and-the-environment/bureau-of-oceans-and-international-environmental-and-scientific-affairs/office-of-international-health-and-biodefense/.*

Place: The two initial meetings will be held at the U.S. State Department's Harry S. Truman Building, 2201 C Street NW, Washington, DC 20520. Please use the 21st Street entrance, and plan to arrive at least twenty minutes prior to the start of the meeting to allow for ID verification and escorting requirements.

Status: The meetings will be open to the public. Persons planning on attending must provide their full name and organization to Dr. Jennifer Seedorff at *seedorffje@state.gov* and copy *RSVP-IHB@state.gov* at least three days prior to each meeting. Persons who need special accommodations should also contact Dr. Seedorff at *seedorffje@state.gov* or (202) 647–3017 and copy *RSVP-IHB@state.gov* at least seven days before each meeting. Requests made after that time will be considered, but might not be possible to accommodate. Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and E.O. 13356. The purpose of the collection is to validate the identity of individuals who enter 1033 Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/242611.pdf* for additional information.

Dated June 4, 2019.

Jerrold L. Mallory,

Deputy Assistant Secretary for Science Space and Health (Acting), Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 2019–12150 Filed 6–7–19; 8:45 am]

BILLING CODE 4710–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 1273X]

New York & Greenwood Lake Railway—Abandonment Exemption—in Bergen and Passaic Counties, N.J.

New York & Greenwood Lake Railway (NYGL) has filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the prior approval requirements of 49 U.S.C. 10903 to abandon 1.1 miles of rail line extending between milepost 0.0 and milepost 1.1 in Bergen and Passaic Counties, N.J. (the Line).[1] The Line traverses U.S. Postal Service Zip Codes 07055 and 07026.

According to NYGL, the Line was purchased in 2017 by Passaic Street Properties, LLC (PSP), through a tax foreclosure sale due to NYGL's failure to pay federal taxes. In 2018, PSP filed a notice of exemption in Docket No. FD 36187 to acquire the Line, which NYGL opposed. The Board rejected PSP's notice of exemption with respect to the Line.[2] NYGL states that, thereafter, it entered into negotiations with PSP and that the parties have reached a settlement in which NYGL has agreed to abandon the Line. NYGL filed the petition for exemption in accordance with the settlement agreement.

NYGL states that the Line has not had a significant amount of traffic since 2009 when its last customer went out of business. According to NYGL, starting in 2017, it renewed efforts to market the Line as a transload facility, and those efforts led to handling about eight carloads of traffic, which NYGL states is insufficient to produce a profit and enable NYGL to rehabilitate the trackage. NYGL states that PSP and the local governments wish to reclaim the right-of-way for urban redevelopment, and local planners seek to redevelop the area for residential and commercial purposes.

In addition to an exemption from the provisions of 49 U.S.C. 10903, NYGL also seeks an exemption from the offer of financial assistance (OFA) procedures of 49 U.S.C. 10904. NYGL states that the submission of an OFA could defeat the very purpose for which this abandonment has been filed. NYGL's request for exemption from section 10904 will be addressed in the final decision.

According to NYGL, the Line does not contain federally granted rights-of-way, and any documentation in NYGL's possession will be made available promptly to those requesting it.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham &*

[1] NYGL initially submitted its petition on April 24, 2019, but supplemented it on May 10, 2019, and again on May 21, 2019. In light of NYGL's supplements, the petition is deemed to have been filed on May 21, 2019.

[2] *Passaic Street Props., LLC—Acquis. & Operation Exemption—N.Y. & Greenwood Lake Ry.,* FD 36187 (STB served July 18, 2018).

Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by September 6, 2019.

Any OFA under 49 CFR 1152.27(b)(2) will be due no later than 120 days after the filing of the petition for exemption, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Persons interested in submitting an OFA must first file a formal expression of intent to file an offer by June 20, 2019, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(1)(i).

Following authorization for abandonment, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than July 1, 2019.[3]

All filings in response to this notice must refer to Docket No. AB 1273X and must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on NYGL's representative, Sloane S. Carlough, Clark Hill, PLC, 1001 Pennsylvania Ave. NW, Suite 1300 South, Washington, DC 20004. Replies to the petition are due on or before July 1, 2019.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any other agencies or persons who comment during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available at *www.stb.gov.*

Decided: June 5, 2019.

By the Board, Allison C. Davis, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–12197 Filed 6–7–19; 8:45 am]

BILLING CODE 4915–01–P

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Additional Implementing Modification to Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of additional implementing modification.

SUMMARY: In a notice published on May 9, 2019 (May 9 Notice), the U.S. Trade Representative (Trade Representative) increased the rate of additional duty from 10 percent to 25 percent for the products of China covered by the September 2018 action that are (i) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and (ii) exported to the United States on or after May 10, 2019. An implementing notice published on May 15, 2019 (May 15 Notice), provided that products of China that are covered by the September 2018 action and that were exported to the United States prior to May 10, 2019, are not subject to the additional duty of 25 percent, as long as these products are entered into the United States prior to June 1, 2019. This notice extends the June 1, 2019 date to June 15, 2019.

DATES: HTSUS heading 9903.88.09, set out in the Annex to the May 15 Notice and as amended by the Annex to this notice, applies to products of China covered by the September 2018 action that were exported before May 10, 2019, and entered into the United States on or after May 10, 2019, and before June 15, 2019. The modification in the Annex to this notice applies as of June 1, 2019.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Associate General Counsel Arthur Tsao or Assistant General Counsel Juli Schwartz, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For questions on customs classification or implementation of additional duties on products covered in the supplemental action, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION: In the May 9 Notice (84 FR 20459), the Trade Representative modified the action being taken in the Section 301 investigation by increasing the rate of additional duty from 10 percent to 25 percent for the products of China covered by the September 2018 action in this investigation. The 'September 2018 action' refers to the additional duties on products of China with an annual trade value of approximately $200 billion, published at 83 FR 47974 (Sep. 21, 2018), as modified by the notice published at 83 FR 49153 (September 28, 2018). Pursuant to the May 9 Notice, the increase in the rate of additional duty was effective on May 10, 2019.

The May 15 Notice (84 FR 21892) implemented the increase in the rate of additional duty by creating a new subheading in Chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) (9903.88.09) for products of China covered by the September 2018 action that were exported before May 10, 2019, and entered into the United States on or after May 10, 2019 and before June 1, 2019. HTSUS heading 9903.88.09 was limited to covered products of China entered into the United States during this period of time to account for customs enforcement factors and the average transit time between China and the United States by sea.

To account further for customs enforcement factors and the transit time for goods exported from China on or before May 10, 2019, and imported directly to the United States, the Trade Representative has determined to extend the June 1, 2019 date to June 15, 2019, as specified in the Annex to this notice. Thus, HTSUS 9903.88.09 applies to products of China covered by the September 2018 action that were exported from China before May 10, 2019, imported directly to the United States from China and entered for consumption, or withdrawn from warehouse for consumption, on or after May 10, 2019 and before June 15, 2019. The modification in the Annex to this notice applies as of June 1, 2019.

The products of China covered by the September 2018 action that are admitted into a foreign-trade zone (FTZ) in 'Privileged Foreign' status shall retain that status consistent with 19 CFR 146.41(e) and will be subject, at the time of entry for consumption, to the

additional duty rate that was in effect at the time of FTZ admission of said product.

U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

Annex

Effective with respect to goods: (1) Exported to the United States before May 10, 2019; and (2) entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on May 10, 2019, and entered for consumption, or withdrawn from warehouse for consumption, before June 15, 2019, the Harmonized Tariff Schedule of the United States is modified:

1. By amending the second paragraph of note 20(l) to subchapter III of chapter 99 by deleting ''June 1,'' and inserting in lieu thereof ''June 15,''; and

2. by amending the article description of heading 9903.88.09 by deleting ''June 1,'' and inserting in lieu thereof ''June 15,''.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

[FR Doc. 2019–12104 Filed 6–7–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0413]

Notice of Intent to Designate as Abandoned Supplemental Type Certificates: S.T.C. Bee, Inc., SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW (Original Product Type Certificate Number A–769—Sky Enterprises, Inc.—RC–3)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to designate S.T.C. Bee, Inc., supplemental type certificates as abandoned; request for comments.

SUMMARY: This notice announces the FAA's intent to designate S.T.C. Bee, Inc., Supplemental Type Certificate (STC) Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW, as abandoned and make the related engineering data available upon request. The FAA has received a request to provide engineering data concerning these STCs. The FAA has been unsuccessful in contacting S.T.C. Bee, Inc., and its heir concerning the STCs. This action is intended to enhance aviation safety.

DATES: The FAA must receive all comments by December 9, 2019.

FOR FURTHER INFORMATION CONTACT: Send all comments on this notice to the Federal Aviation Administration, Seattle ACO Branch, Attention: Karen Murphy, AIR–781, 2200 South 216th Street, Des Moines, WA 98198. You may also contact Karen Murphy by phone at (206) 231–3562 or email at *Karen.Murphy@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to provide comments, written data, views, or arguments relating to this notice. All comments received on or before the closing date will be considered. All comments received will be available in the docket for examination by interested persons. Comments may be inspected at the office of the FAA, Seattle ACO, 2200 South 216th Street, Des Moines, WA, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

Background

This notice is to inform the public that the FAA intends to designate S.T.C. Bee, Inc., STC Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW, as abandoned and subsequently release the related engineering data.

The FAA has received a third party request for the release of data for the S.T.C. Bee, Inc., STCs under the provisions the Freedom of Information Act (FOIA), 5 U.S.C. 552. The third party requester is the owner of an aircraft modified by these STCs and would like the engineering data to maintain the aircraft. The FAA cannot release commercial or financial information, such as the requested data, under FOIA without the permission of the data owner. However, in accordance with title 49 of the United States Code § 44704(a)(5), the FAA can make available upon request engineering data in possession of the FAA relating to an STC if the FAA can determine that the STC has been inactive for 3 or more years, and using due diligence the FAA is unable to locate the owner of record or the owner of record's heir. There has been no activity on these STCs for more than 3 years.

On January 17, 2017, the FAA sent registered letters to S.T.C. Bee, Inc.'s last known addresses, 10900 Rainier Avenue South, Seattle, WA 98178, and P.O. Box 264, McKenna, WA 98558. The FAA informed the company that the FAA intends to classify STC Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW as abandoned unless, within 60 days of receipt of the letter, the FAA receives a written statement from them stating they are the holder of SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW. The FAA has also attempted to make contact with S.T.C. Bee, Inc., by sending a registered letter to the last known owner, Mr. Jack Daubenspeck, and Mr. Daubenspeck's son, Mike Alan Daubenspeck, at 5605 32nd Court SE, Lacey, WA 98503, informing them of the same as sent in the company registered letter. The FAA was unsuccessful in its attempts to contact the STCs' owner or heir. Additionally, the FAA attempted to make contact with S.T.C. Bee, Inc., by other means, including telephone communication and internet searches, but without success.

Information Requested

If you are the owner, or heir, or a transferee of STC Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW, or have any knowledge regarding who may now hold STC Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW, please contact Karen Murphy using a method described in this notice under **FOR FURTHER INFORMATION CONTACT**. If you are the heir of the owner or the owner by transfer of STC Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW, you must provide a notarized copy of your Government issued identification with a letter and background establishing your ownership of the STCs and, if applicable, your relationship as the heir to the deceased holder of the STCs.

Conclusion

If the FAA does not receive any response by December 9, 2019, the FAA will consider STC Nos. SA374NW, SA391NW, SA393NW, SA395NW, SA575NW, SA576NW, SA613NW, and SA823NW abandoned, and the FAA will proceed with the release of the requested data. This action is for the purpose of maintaining the airworthiness of an aircraft and enhancing aviation safety.

Issued in Des Moines, Washington, on June 4, 2019.

Paul R. Bernado,

Aviation Safety, Acting Manager, Seattle ACO Branch, Compliance and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–12095 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0054]

Request for Information Concerning Commercial Motor Vehicle Driver Detention Times During Loading and Unloading

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Request for information.

SUMMARY: FMCSA requests information on existing or potential sources of data to better understand driver detention times during the loading and unloading of commercial motor vehicles (CMVs) and the potential impact of such delays on roadway safety. A recent study by the U.S. Department of Transportation's (DOT) Office of Inspector General found that better data are needed to fully understand the issues associated with driver detention.

DATES: Comments on this notice must be received on or before September 9, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2019–0054 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Nicole Michel, Research Division, Office of Analysis, Research and Technology, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4354, *nicole.michel@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0054), indicate the specific question of this document to which each comment applies, and provide a source for your data. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2019–0054, in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as ''confidential'' or ''CBI.'' Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this notice.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2019–0054, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

II. Background

A number of studies have examined the issue of CMV driver delays in the loading and unloading process, and what their potential impact may be on roadway safety and the economy. For example, in 2011 the Government Accountability Office (GAO), in its report *More Could Be Done to Determine Impact of Excessive Loading and Unloading Wait Times on Hours of*

Service Violations (GAO–11–198),[1] recommended that ''FMCSA examine the extent to which detention time contributes to hours of service violations in its future studies on driver fatigue and detention time.'' In response to the GAO report, FMCSA sponsored a study [2] among a sample of carriers which generated estimates of driver delay times. Among the sampled carriers, the study found that drivers experienced detention time during approximately 10 percent of their stops for an average duration of 1.4 hours beyond a commonly accepted two-hour loading and unloading period [total driver wait time = (legitimate loading/unloading time) + (delay times)]. Most recently, in a 2018 report titled *Estimates Show Commercial Driver Detention Increases Crash Risks and Costs, but Current Data Limit Further Analysis,*[3] DOT's Office of Inspector General recommended that FMCSA collaborate with industry stakeholders to develop and implement a plan to collect and analyze reliable, accurate, and representative data on the frequency and severity of driver detention.

Although the above referenced studies estimated overall wait times, they were not able to separate normal loading and unloading times (*e.g.,* the time it would usually take to load and unload a CMV under typical schedules) from detention time (delays in the start of the loading and unloading process which disrupt the driver's available driving and/or on-duty time). This is a critical data gap in our understanding of the detention issue.

FMCSA is interested in data sources, methodologies, and potential technologies that could provide insight into loading and unloading delays experienced by CMV drivers.

III. Request for Information

Specifically, FMCSA requests information that addresses the following questions:

1. Are data currently available that can accurately record loading, unloading, and delay times?
2. Is there technology available that could record and delineate prompt loading and unloading times versus the extended delays sometimes experienced by drivers?
3. How can delay times be captured and recorded in a systematic, comparable manner?
4. Could systematic collection and publication of loading, unloading, and delay times be useful in driver or carrier business decisions and help to reduce loading, unloading, and delay times?
5. What should FMCSA use as an estimate of reasonable loading/unloading time? Please provide a basis for your response.
6. How do contract arrangements between carriers and shippers address acceptable wait times? Do these arrangements include penalties for delays attributable to a carrier or shipper?
7. What actions by FMCSA, within its current statutory authority, would help to reduce loading, unloading, and delay times?

Issued under authority delegated in 49 CFR 1.87 on: June 4, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–12167 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] *https://www.gao.gov/assets/320/315297.pdf.*

[2] Driver Detention Times in Commercial Motor Vehicle Operations (December 2014), *https://rosap.ntl.bts.gov/view/dot/194/dot_194_DS1.pdf?*

[3] *https://www.oig.dot.gov/library-item/36237.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0102]

Agency Information Collection Activities; Renewal of a Currently-Approved Collection: Driver Qualification Files

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to revise and renew an ICR titled ''Driver Qualification Files,'' OMB Control Number 2126–0004. The ICR estimates the burden commercial motor vehicle (CMV) drivers and motor carriers incur to comply with the reporting and recordkeeping tasks required for motor carriers to maintain driver qualification (DQ) files. The Agency's regulations pertaining to maintaining DQ files are unchanged and impose no increased information collection (IC) burden on individual drivers and motor carriers. However, the Agency increases its estimate of the total IC burden of these regulations primarily because both the number of CMV drivers and the frequency of their hiring have increased since the Agency's 2016 estimate of this burden.

DATES: FMCSA must receive your comments to this notice on or before August 9, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2019–0102 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Same as mail address above between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.
- *Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.
- *Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL 14–FDMS), which can be reviewed at *www.transportation.gov/privacy.*
- *Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, Driver and Carrier Operations Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2834 (October 30, 1984)) requires the Secretary of Transportation to issue regulations pertaining to commercial motor vehicle (CMV) safety. Part 391 of volume 49 of the Code of Federal Regulations (CFR) contains the minimum qualifications of drivers of CMVs in interstate commerce.

Motor carriers may not require or permit an unqualified driver to operate a CMV. The foremost proof of driver qualification is the information that part 391 requires be collected and maintained in the driver qualification file (DQ file) (49 CFR 391.51). Motor carriers must obtain this information from sources specified in the regulations, such as the driver, previous employers of the driver, and officials of the State of driver licensure. Motor carriers are not required to forward DQ information to FMCSA, but must maintain the information in a DQ file and make it available to State and Federal safety investigators on demand.

Through this ICR, FMCSA is asking OMB's approval to renew and revisee its estimate of the paperwork burden imposed by its DQ file regulations. The regulations have not been amended; the IC burden imposed on individual drivers and motor carriers by the regulations is unchanged. The current IC burden estimate approved by OMB is 10.21 million hours. The Agency has increased its estimate of the total IC burden from 10.21 million hours to 12.26 million hours. The increase in burden hours is primarily the result of a larger driver population and a higher driver turnover rate, both of which affect the volume of documents produced and filed in DQ files. This revised ICR removes the medical examiner's certificate recordkeeping requirement from the estimate of burden hours and cost to eliminate double counting. Although the currently approved ICR did not monetize driver and motor carrier burden hours, the revised ICR monetizes such burden. The draft supporting statement for this ICR is available in the docket.

Title: Driver Qualification Files.

OMB Control Number: 2126–0004.

Type of Request: Renewal and revision of a currently-approved information collection.

Respondents: CMV motor carriers and drivers.

Estimated Number of Respondents: 6.89 million (6.35 million drivers + 0.54 million motor carriers).

Expiration Date: January 31, 2020.

Frequency of Response: The information on some DQ documents is only provided one time, such as that furnished at the time the individual applies for employment as a driver. Other information must be obtained by the motor carrier within 30 days of the date the driver begins to drive a CMV for the employer. Other information, such as the driver's motor vehicle record, is only updated once a year.

Estimated Total Annual Burden: 12.26 million hours.

Public Comments Invited: FMCSA requests that you comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for FMCSA to perform its functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority delegated in 49 CFR 1.87 on: June 4, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–12169 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0042]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that on May 29, 2019, the Buffalo & Pittsburgh Railroad, Inc. (BPRR), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240, *Qualification and Certification of Locomotive Engineers,* and part 242, *Qualification and Certification of Conductors.* FRA assigned the petition Docket Number FRA–2019–0042.

The relief is requested as part of BPRR's proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^{3}RS) Program. BPRR seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 CFR 240.117(e)(1)–(4); 240.305(a)(l)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(l)–(4), (e)(6)–(11), and (f)(l)–(2). The C^{3}RS Program encourages certified operating crew members to report close calls and protect the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^{3}RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 25, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.).

Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Acting Associate Administrator, Office of Railroad Safety.

[FR Doc. 2019–12110 Filed 6–7–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning reverse like-kind exchanges.

DATES: Written comments should be received on or before August 9, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Laurie Brimmer, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reverse Like-Kind Exchanges.

OMB Number: 1545–1701.

Revenue Procedure Number: 2000–37.

Abstract: Revenue Procedure 2000–37 provides a safe harbor for reverse like-kind exchanges in which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under section 1031 of the Internal Revenue Code. Revenue Procedure 2004–51 modifies sections 1 and 4 of Rev. Proc. 2000–37, 2000–2 C.B. 308, to provide that Rev. Proc. 2000–37 does not apply if the taxpayer owns the property intended to qualify as replacement property before initiating a qualified exchange accommodation arrangement (QEAA).

Current Actions: There are no changes being made to this Revenue Procedure that would affect burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 1,600.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 3,200 hrs.

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: June 5, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–12160 Filed 6–7–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; OFAC Application for the Release of Blocked Funds

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before July 10, 2019 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Jennifer Quintana by emailing *PRA@treasury.gov,* calling (202) 622–0489, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Office of Foreign Assets Control (OFAC)

Title: OFAC Application for the Release of Blocked Funds.

OMB Control Number: 1505–0170.

Type of Review: Extension without change of a currently approved collection.

Description: Assets blocked pursuant to sanctions administered by Office of Foreign Assets Control (OFAC) may be released only through a specific license issued by OFAC. Since February 2000, use of this form to apply for the unblocking of funds transfers has been mandatory pursuant to 31 CFR 501.801(b)(2). Use of this form greatly facilitates and speeds applicants' submissions and OFAC's processing.

Form: TD F 90–22.54.

Affected Public: Businesses or other for-profits, Individuals and households.

Estimated Number of Respondents: 3,000.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 3,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 5, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–12139 Filed 6–7–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Survey of Foreign Ownership of U.S. Securities as of June 30, 2019

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2019. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHL (2019) and instructions may be printed from the internet at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The following U.S. persons must report on this survey:

(1) U.S. persons who manage the safekeeping of U.S. securities (as specified below) for foreign persons. These U.S. persons, who include the affiliates in the United States of foreign entities, and are henceforth referred to as U.S. custodians, must report on this survey if the total market value of the U.S. securities whose safekeeping they manage on behalf of foreign persons—aggregated over all accounts and for all U.S. branches and affiliates of their firm—is $100 million or more as of June 30, 2019.

(2) U.S. persons who issue securities, if the total market value of their securities owned directly by foreign persons—aggregated over all securities issued by all U.S. subsidiaries and affiliates of the firm, including investment companies, trusts, and other legal entities created by the firm—is $100 million or more as of June 30, 2019. U.S. issuers should report only foreign holdings of their securities which are directly held for foreign residents, *i.e.,* where no U.S.-resident custodian or central securities depository is used. Securities held by U.S. nominees, such as bank or broker custody departments, should be considered to be U.S.-held securities as far as the issuer is concerned.

(3) U.S. persons who receive a letter from the Federal Reserve Bank of New York that requires the recipient of the letter to file Schedule 1, even if the recipient is under the exemption level of $100 million and need only report ''exempt'' on Schedule 1.

What To Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the website address given above in the **SUMMARY**, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or (646) 720–6300, email: *SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Data and Statistics Function, 6th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to the Federal Reserve Board of Governors, at (202) 452–3476, or to Dwight Wolkow, at (202) 622–1276, or by email: *comments2TIC@do.treas.gov.*

When To Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 30, 2019.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 321 hours per report for custodians of securities (the burden varies widely and we estimate 486 hours for the largest custodians), 61 hours per report for issuers of securities that have data to report and are not custodians (we estimate 110 hours for the largest issuers), and 17 hours per report for those who file as exempt in a benchmark survey. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2019–12112 Filed 6–7–19; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0793]

Agency Information Collection Activity: VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs (HPSP and VIOMPSP)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Health Administration, 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 August 9, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Brian McCarthy, Office of Regulatory and Administrative Affairs (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–0793'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Brian McCarthy at (202) 615–9241.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA Health Professional Scholarship and Visual Impairment and Orientation and Mobility Professional Scholarship Programs (HPSP and VIOMPSP).

1. Academic Verification, VA Form 10–0491.
2. Addendum to Application, VA Form 10–0491a.
3. Annual VA Employment Deferment Verification, VA Form 10–0491c.
4. Education Program Completion Notice—Service Obligation Placement, VA Form 10–0491d.
5. Evaluation Recommendation Form, VA Form 10–0491e.
6. HPSP Agreement, VA Form 10–0491f.
7. HPSP/VIOMPSP Application, VA Form 10–0491g.
8. Notice of Approaching Graduation, VA Form 10–0491h.
9. Notice of Change and/or Annual Academic Status Report, VA Form 10–0491i.
10. Request for Deferment for Advanced Education, VA Form 10–0491j.
11. VA Scholarship Offer Response, VA Form 10–0491k.
12. VIOMPSP Agreement, VA Form 10–0491l.
13. Mobility Agreement, VA Form 10–0491m.
14. HPSP VHVMAESP Agreement, VA Form 10–0491n.

OMB Control Number: 2900–0793.

Type of Review: Revision of a currently approved collection.

Abstract: This is a revision of a currently approved collection, due to legislation that necessitates adding two forms and amending existing forms. The collection of information is essential to implement the Department of Veterans Affairs (VA) Visual Impairment and Orientation and Mobility Professionals Scholarship Program (VIOMPSP) and the VA Health Professional Scholarship Program (HPSP) which were authorized under Public Law 111–163 on May 5, 2010 and extended through December 31, 2033 by Section 301 of Public Law 115–182, The VA Mission Act of 2018. The passage of this legislation allows VA to provide services to the public by awarding scholarships to non-VA employees who will be required to become VA employees in the professions for which they were educated under these programs. Section 304 of The Mission Act of 2018 authorized the creation of the Veterans Healing Veterans Medical Access and Education Scholarship Program (VHVMAESP). These programs will help address VA health care workforce needs.

Affected Public: Individuals and households.

ESTIMATED ANNUAL BURDEN

VA Forms	Number of respondents	x Number of responses	Equals	x Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
Visual Impairment and Orientation and Mobility Professionals Scholarship Program (VIOMPSP) Applicants							
10–0491g—Application	100	1	100	60	6,000		100
10–0491—Academic Verification	100	1	100	60	6,000		100
10–0491e—Evaluation & Recommendation	100	2	200	50	5,000		83.3
10–0491a—Addendum to Application	*30	1	30	10	300		5
Total							288.3
Applicants Selected To Receive a Scholarship							
10–0491l—Agreement for the VIOMPSP	10	1	10	15	150		2.5
10–0491m—VA Scholarship Mobility Agreement	10	1	10	10	100		1.7
10–0491k—VA Scholarship Offer Response	10	1	10	10	100		1.7
10–0491i—Notice of Change and/or Annual Academic Status Report.	10	1	10	20	200		3.3
10–0491h—Notice of Approaching Graduation	10	1	10	10	100		1.7
10–0491d—Education Program Completion Notice/Service Obligation Placement.	10	1	10	20	200		3.3
10–0491j—Request for Deferment for Advanced Education	2	1	2	10	20		.3
10–0491c—Annual VA Employment/Deferment Verification	10	1	10	10	100		1.7
Total							16.2
Grand Total for VIOMPSP							304.5
Health Professional Scholarship Program (HPSP) Applicants							
10–0491g—Application	1,700	1	1,700	60	102,000		1,700

ESTIMATED ANNUAL BURDEN—Continued

VA Forms	Number of respondents	x Number of responses	Equals	x Number of minutes	Equals (minutes)	÷ by 60 =	Number of hours
10–0491—Academic Verification	1,700	1	1,700	60	102,000		1,700
10–0491e—Evaluation & Recommendation	1,700	2	3,400	50	170,000		2,833.3
10–0491a—Addendum to Application	*510	1	510	10	5,100		85
Total							6,318.3
Applicants Selected To Receive a Scholarship							
10–0491f—Agreement for the HPSP	160	1	160	15	2,400		40
10–0491n—Agreement for the VHVMAESP	20	1	20	15	300		5
10–0491m—Mobility Agreement	160	1	160	10	1,600		26.7
10–0491k—VA Scholarship Offer Response	160	1	160	10	1,600		26.7
10–0491i—Notice of Change and/or Annual Academic Status Report.	480	1	480	20	9,600		160
10–0491h—Notice of Approaching Graduation	160	1	160	10	1,600		26.7
10–0491d—Education Program Completion Notice/Service Obligation Placement.	160	1	160	20	3,200		53.3
10–0491j—Request for Deferment for Advanced Education	*48	1	48	10	480		8
10–0491c—Annual VA Employment/Deferment Verification	160	1	160	10	1,600		26.7
Total							373.1
Grand Total for HPSP							6,691.4
Grand Total for Both VIOMPSP and HPSP (6,691.4 + 304.5 = 6,995.9).							~ 6,996

*(30%).

Frequency of Response: Annually.

Estimated Number of Respondents: 1,800.

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. 2019–12131 Filed 6–7–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXXX]

Agency Information Collection Activity Under OMB Review: The Veteran Employment Through Technology Education Courses (VET TEC) Pilot Program

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits 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 July 10, 2019.

ADDRESSES: Submit written comments on the collection of information through *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 *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–XXXX'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Public Law 115–48, section 116; 44 U.S.C. 3501–21.

Title: Veteran Employment Through Technology Education Courses (VET TEC) Employment Verification Form: (VA Form 22–10201).

OMB Control Number: 2900–XXXX.

Type of Review: New collection.

Abstract: VA Form 22–10201 will allow student veterans and SCOs to certify that a student veteran has obtained meaningful employment with the skills acquired during their training program funded by the VET TEC program. The form will exist solely online and will be accessible via the *Vets.gov* website.

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 12670, dated April 2, 2019 on page 12670.

Affected Public: Individuals or Households.

Estimated Annual Burden: 46,875 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 562,000.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–12087 Filed 6–7–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Monday,

No. 111 June 10, 2019

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Geophysical Surveys in the Northeast Pacific Ocean; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG948

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Geophysical Surveys in the Northeast Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) for authorization to take marine mammals incidental to a marine geophysical survey in the northeast Pacific Ocean. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 10, 2019.

ADDRESSES: Comments 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.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. 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 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: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. 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 incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

Accordingly, NMFS is preparing an Environmental Assessment (EA) to consider the environmental impacts associated with the issuance of the proposed IHA. NMFS' EA will be made available at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On December 21, 2018, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to a marine geophysical survey of the Axial Seamount in the Northeast Pacific Ocean. The application was deemed adequate and complete on May 3, 2019. L–DEO's request is for take of a small number of 26 species of marine mammals by Level B harassment and Level A harassment. Neither L–DEO nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Researchers from the University of Texas at Austin, University of Nevada Reno, University of California San Diego, with funding from the U.S. National Science Foundation (NSF), propose to conduct high-energy seismic surveys from Research Vessel (R/V) *Marcus G. Langseth* (*Langseth*) in the Northeast Pacific Ocean during summer 2019. The NSF-owned *Langseth* is operated by Columbia University's L–DEO under an existing Cooperative Agreement. The proposed two-dimensional (2–D) and three-dimensional (3–D) seismic surveys would occur in International Waters outside of the U.S. Exclusive Economic

Zone (EEZ). The 2–D survey would use a 36-airgun towed array with a total discharge volume of ~6,600 cubic inches (in^3); the 3–D survey would employ an 18-airgun array with a discharge volume of ~3,300 in^3.

The primary objectives of the surveys proposed by researchers from the University of Texas at Austin Institute for Geophysics (UTIG), the Nevada Seismological Laboratory at the University of Nevada Reno (UNR) and Scripps Institution of Oceanography (SIO) at the University of California San Diego, is to create a detailed 3–D image of the main and satellite magma reservoirs that set the Axial volcano's framework, image the 3–D fracture network and how they influence the magma bodies, and to connect the subsurface observations to the surface features. The main goal of the seismic program is to explore linkages between complex magma chamber structure, caldera dynamics, fluid pathways, and hydrothermal venting. Seismic data acquired during the proposed study could be used to evaluate earthquake, tsunami, and submarine landslide hazards.

Dates and Duration

The proposed surveys would be expected to last for 33 days, including approximately 19 days of seismic operations (approximately 16 days for the 3–D survey and three days for the 2–D survey), seven days of equipment deployment/retrieval, three days of operational contingency time (*e.g.,* infill, weather delays, etc.), two days for turns (no airguns firing) during the 3–D survey, and roughly two days of transit. R/V *Langseth* would leave out of and return to port in Astoria, OR, during summer (July/August) 2019.

Specific Geographic Region

The proposed surveys would occur within ~45.5–46.5° N, ~129.5–130.5° W. Representative survey tracklines are shown in Figure 1. Some deviation in actual track lines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment. Thus, the tracklines could occur anywhere within the coordinates noted above. The proposed surveys would be conducted in International Waters outside the U.S. EEZ. The surveys would occur in water depths ranging from 1,400 to 2,800 meters (m). The proposed survey area is approximately 423 kilometers (km) (229 miles (mi)) from shore at its closest point.

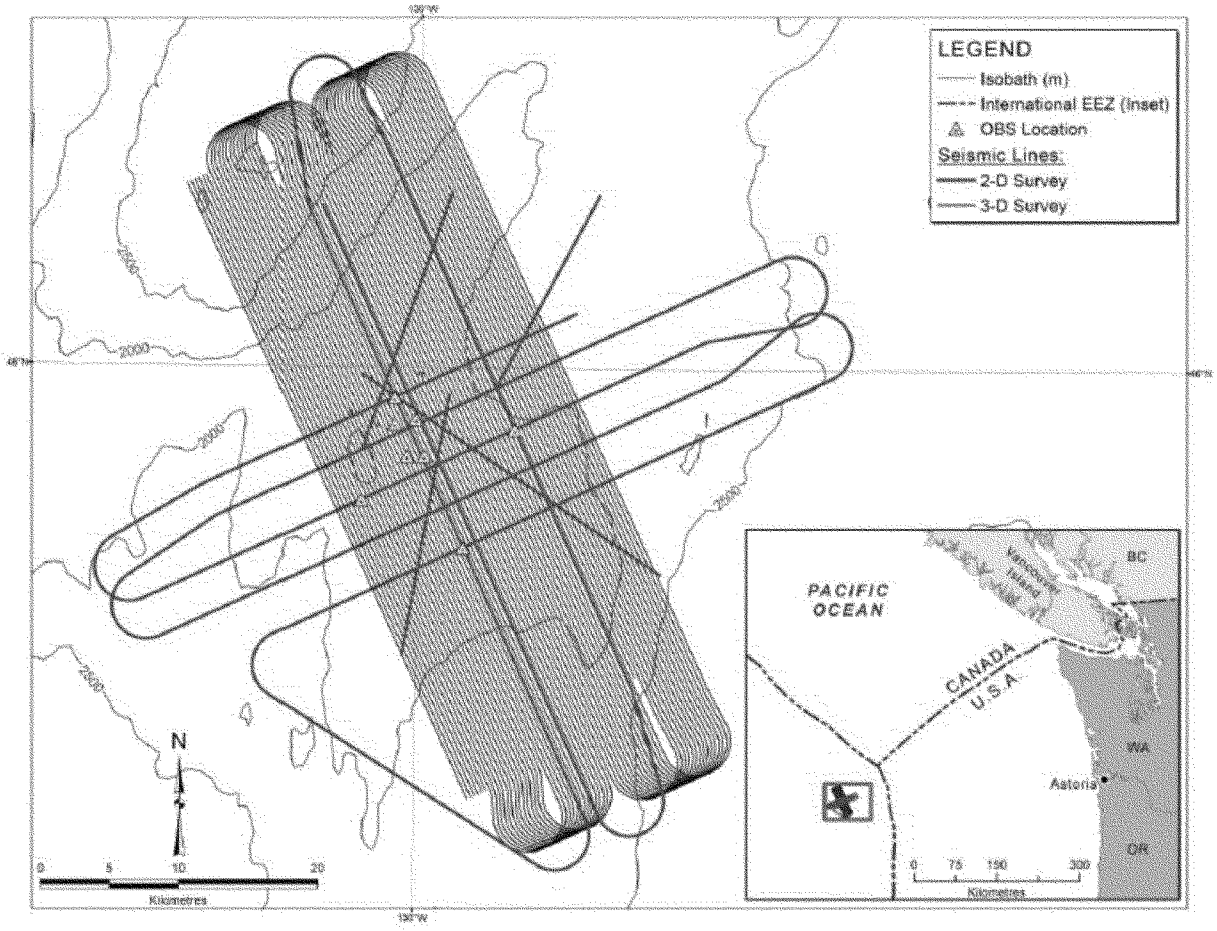

Figure 1. Location of the proposed seismic surveys in International Waters of the Northeast Pacific Ocean

Detailed Description of Specific Activity

The procedures to be used for the proposed surveys would be similar to those used during previous seismic surveys by L–DEO and would use conventional seismic methodology. The surveys would involve one source vessel, R/V *Langseth,* which is owned by NSF and operated on its behalf by L–DEO.

R/V *Langseth* would first deploy four 6-km streamers and 18 airguns to conduct the 3–D multichannel seismic survey to examine the Axial volcano and associated rift axes within an approximate 17 x 40 km area. The 3–D survey would consist of a racetrack formation with 57 40-km long lines and a turning diameter of 8.5 km (Figure 1); no airguns would be firing during turns. The survey speed would be ~4.5 knots (kn) (8.3 km/hour) for the 3–D survey. The airgun array and streamers would then be recovered, and one 15-km streamer would be deployed along with 36 airguns to acquire eight ~26-km-long source-receiver offset 2–D reflection profiles that would look at deep-seated structure of magma delivery. During the 2–D survey, the airguns would be firing during turns to the next line, and the survey speed would be ~4.2 kn (7.8 km/hour).

The receiving system would consist of hydrophone streamers and up to eight ocean bottom seismometers (OBSs). The OBSs are long-term broadband instruments that would be left out for ~1 year and recovered by another vessel. They have a height and diameter of ~1 m, with an 80 kg anchor. To retrieve OBSs, an acoustic release transponder (pinger) is used to interrogate the instrument at a frequency of 8–11 kHz, and a response is received at a frequency of 11.5–13 kHz. The burn-wire release assembly is then activated, and the instrument is released to float to the surface from the anchor which is not retrieved. Four 6-km long hydrophone streamers would be used during 3–D data acquisition and one 15-km long streamer would be employed for 2–D data acquisition. As the airguns are towed along the survey lines, the hydrophone streamer(s) would transfer the data to the on-board processing system, and the OBSs would receive and store the returning acoustic signals internally for later analysis.

A total of ~3,760 km of transect lines would be surveyed in the Northeast Pacific Ocean: ~3,196 km during the 3–D survey (including run ins and run outs) and 564 km during the 2–D survey. There could be additional seismic operations associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard. To account for unanticipated delays, 25 percent has been added in the form of operational days, which is equivalent to adding 25 percent to the proposed line km to be surveyed.

In addition to the operations of the airgun array, a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP) would be operated from R/V *Langseth* continuously during the seismic surveys, but not during transit to and from the survey area. All planned geophysical data acquisition activities would be conducted by L–DEO with on-board assistance by the scientists who have proposed the studies. The vessel would be self-contained, and the crew would live aboard the vessel.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the survey area and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific and Alaska SARs (Caretta *et al.,* 2018; Muto *et al.,* 2018). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2017 SARs (Caretta *et al.,* 2018; Muto *et al.,* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	Eschrichtius robustus	Eastern North Pacific	-/-; N	26,960 (0.05, 25,849, 2016).	801	138
		Western North Pacific	E/D; Y	175 (0.05, 167, 2016)	0.07	Unknown
Family Balaenidae:						
North Pacific right whale	Eubalaena japonica	Eastern North Pacific	E/D; Y	31 (0.226, 26, 2015)	0.05	0

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Family Balaenopteridae (rorquals):						
Humpback whale	Megaptera novaeangliae	California/Oregon/Washington	-/-; Y	1,918 (0.03, 1,876, 2014).	11	>9.2
Minke whale	Balaenoptera acutorostrata	California/Oregon/Washington	-/-; N	636 (0.72, 369, 2014)	3.5	>1.3
Sei whale	Balaenoptera borealis	Eastern North Pacific	E/D; Y	519 (0.4, 374, 2014)	0.75	0
Fin whale	Balaenoptera physalus	California/Oregon/Washington	E/D; Y	9,029 (0.12, 8,127, 2014).	81	>2.0
Blue whale	Balaenoptera musculus	Eastern North Pacific	E/D; Y	1,647 (0.07, 1,551, 2011).	2.3	>0.2
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae:						
Sperm whale	Physeter macrocephalus	California/Oregon/Washington	E/D; Y	1,967 (0.57, 1,270, 2014).	2.5	0.9
Family Kogiidae:						
Pygmy sperm whale	Kogia breviceps	California/Oregon/Washington	-/-; N	4,111 (1.12, 1,924, 2014).	19	0
Dwarf sperm whale	Kogia sima	California/Oregon/Washington	-/-; N	Unknown (Unknown, Unknown, 2014).	Undetermined.	0
Family Ziphiidae (beaked whales):						
Cuvier's beaked whale	Ziphius cavirostris	California/Oregon/Washington	-/-; N	3,274 (0.67, 2,059, 2014).	21	<0.1
Baird's beaked whale	Berardius bairdii	California/Oregon/Washington	-/-; N	2,697 (0.6, 1,633, 2014)	16	0
Blainville's beaked whale	Mesoplodon densirostris	California/Oregon/Washington	-/-; N	3,044 (0.54, 1,967, 2014).	20	0.1
Hubbs' beaked whale	Mesoplodon carlshubbi					
Stejneger's beaked whale	Mesoplodon stejnegeri					
Family Delphinidae:						
Bottlenose dolphin	Tursiops truncatus	California/Oregon/Washington offshore.	-/-; N	1,924 (0.54, 1,255, 2014).	11	>1.6
Striped dolphin	Stenella coeruleoalba	California/Oregon/Washington	-/-; N	29,211 (0.2, 24,782, 2014).	238	> 0.8
Short-beaked common dolphin.	Delphinus delphis	California/Oregon/Washington	-/-; N	969,861 (0.17, 839,325, 2014).	8,393	>40
Pacific white-sided dolphin	Lagenorhynchus obliquidens	California/Oregon/Washington	-/-; N	26,814 (0.28, 21,195, 2014).	191	7.5
Northern right whale dolphin.	Lissodelphis borealis	California/Oregon/Washington	-/-; N	26,556 (0.44, 18,608, 2014).	179	3.8
Risso's dolphin	Grampus griseus	California/Oregon/Washington	-/-; N	6,336 (0.32, 4,817, 2014).	46	>3.7
False killer whale	Pseudorca crassidens	Hawaii Pelagic	-/-; N	1,540 (0.66, 928, 2010)	9.3	7.6
Killer whale	Orcinus orca	Offshore	-/-; N	240 (0.49, 162, 2014)	1.6	0
		Southern Resident	E/D; Y	83 (N/A, 83, 2016)	0.14	0
		Northern Resident	-/-; N	261 (N/A, 261, 2011)	1.96	0
		West Coast Transient	-/-; N	243 (N/A, 243, 2009)	2.4	0
Short-finned pilot whale	Globicephala macrorhynchus	California/Oregon/Washington	-/-; N	836 (0.79, 466, 2014)	4.5	1.2
Family Phocoenidae (porpoises):						
Harbor porpoise	Phocoena phocoena	Northern Oregon/Washington Coast.	-/-; N	21,487 (0.44, 15,123, 2011).	151	>3.0
Dall's porpoise	Phocoenoides dalli	California/Oregon/Washington	-/-; N	25,750 (0.45, 17,954, 2014).	172	0.3
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Northern fur seal	Callorhinus ursinus	Eastern Pacific	-/D; Y	620,660 (0.2, 525,333, 2016).	11,295	457
		California	-/D; N	14,050 (N/A, 7,524, 2013).	451	1.8
California sea lion	Zalophus californianus	U.S	-/-; N	257,606 (N/A, 233,515, 2014).	14,011	>197
Steller sea lion	Eumetopias jubatus	Eastern U.S	-/-; N	41,638 (see SAR, 41,638, 2015).	2,498	108
Guadalupe fur seal	Arctocephalus townsendi	Mexico	T/D; Y	20,000 (N/A, 15,830, 2010).	542	>3.2
Family Phocidae (earless seals):						
Harbor seal	Phoca vitulina	Oregon/Washington Coastal	-/-; N	Unknown (Unknown, Unknown, 1999).	Undetermined.	10.6

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE SURVEY AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Northern elephant seal	Mirounga angustirostris	California Breeding	-/-; N	179,000 (N/A, 81,368, 2010).	4,882	8.8

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note: Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal and/or spatial occurrence of gray whales, Southern Resident and Northern Resident killer whales, harbor porpoise, harbor seal, California sea lion, and Steller sea lion is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. These species are found in the eastern North Pacific, but are generally found in coastal waters and are not expected to occur offshore in the survey area.

Humpback Whale

The humpback whale is found throughout all of the oceans of the world (Clapham 2009). The worldwide population of humpbacks is divided into northern and southern ocean populations, but genetic analyses suggest some gene flow (either past or present) between the North and South Pacific (*e.g.*, Baker *et al.*, 1993; Caballero *et al.*, 2001). Geographical overlap of these populations has been documented only off Central America (Acevedo and Smultea 1995; Rasmussen *et al.*, 2004, 2007). Although considered to be mainly a coastal species, humpback whales often traverse deep pelagic areas while migrating (Clapham and Mattila 1990; Norris *et al.*, 1999; Calambokidis *et al.*, 2001).

Humpback whales migrate between summer feeding grounds in high latitudes and winter calving and breeding grounds in tropical waters (Clapham and Mead 1999). North Pacific humpback whales summer in feeding grounds along the Pacific Rim and in the Bering and Okhotsk seas (Pike and MacAskie 1969; Rice 1978; Winn and Reichley 1985; Calambokidis *et al.*, 2000, 2001, 2008). Humpbacks winter in four different breeding areas: (1) Along the coast of Mexico; (2) along the coast of Central America; (3) around the main Hawaiian Islands; and (4) in the western Pacific, particularly around the Ogasawara and Ryukyu islands in southern Japan and the northern Philippines (Calambokidis *et al.*, 2008; Bettridge *et al.*, 2015). These breeding areas have been designated as DPSs, but feeding areas have no DPS status (Bettridge *et al.*, 2015; NMFS 2016b). Individuals encountered in the proposed survey area most likely would come from the Central America and Mexico distinct population segments (DPSs), although some individuals from the Hawaii DPS may also feed in these waters. There is a low level of interchange of whales among the main wintering areas and among feeding areas (*e.g.,* Darling and Cerchio 1993; Salden *et al.*, 1999; Calambokidis *et al.*, 2001, 2008).

The humpback whale is the most common species of large cetacean reported off the coasts of Oregon and Washington from May to November (Green *et al.*, 1992; Calambokidis *et al.*, 2000, 2004). The highest numbers have been reported off Oregon during May and June and off Washington during July–September. However, off Oregon and Washington, humpbacks occur primarily over the continental shelf and slope during the summer, with few reported in offshore pelagic waters (Green *et al.*, 1992; Calambokidis *et al.*, 2004, 2015; Becker *et al.*, 2012; Menza *et al.*, 2016). Biologically important areas (BIAs) for feeding humpback whales along the coasts of Oregon and Washington, which have been designated from May to November, are all within ~80 km offshore (Calambokidis *et al.*, 2015).

Minke Whale

The minke whale has a cosmopolitan distribution that spans from tropical to polar regions in both hemispheres (Jefferson *et al.*, 2015). In the Northern Hemisphere, the minke whale is usually seen in coastal areas, but can also be seen in pelagic waters during its northward migration in spring and summer and southward migration in autumn (Stewart and Leatherwood 1985). In the North Pacific, the summer range of the minke whale extends to the Chukchi Sea; in the winter, the whales move farther south to within 2° of the Equator (Perrin and Brownell 2009).

The International Whaling Commission (IWC) recognizes three stocks of minke whales in the North Pacific: The Sea of Japan/East China Sea, the rest of the western Pacific west of 180° N, and the remainder of the Pacific (Donovan 1991). Minke whales are relatively common in the Bering and Chukchi seas and in the Gulf of Alaska, but are not considered abundant in any other part of the eastern Pacific (Brueggeman *et al.*, 1990). In the far north, minke whales are thought to be migratory, but they are believed to be year-round residents in coastal waters off the U.S. West Coast (Dorsey *et al.*, 1990).

Sei Whale

The distribution of the sei whale is not well known, but it is found in all oceans and appears to prefer mid-latitude temperate waters (Jefferson *et al.*, 2015). The sei whale is pelagic and generally not found in coastal waters (Jefferson *et al.*, 2015). It is found in deeper waters characteristic of the continental shelf edge region (Hain *et al.*, 1985) and in other regions of steep bathymetric relief such as seamounts and canyons (Kenney and Winn 1987; Gregr and Trites 2001). On feeding grounds, sei whales associate with oceanic frontal systems (Horwood 1987) such as the cold eastern currents in the North Pacific (Perry *et al.*, 1999a). Sei whales migrate from temperate zones occupied in winter to higher latitudes in the summer, where most feeding takes place (Gambell 1985a). During summer in the North Pacific, the sei whale can be found from the Bering Sea to the Gulf of Alaska and down to southern

California, as well as in the western Pacific from Japan to Korea. Its winter distribution is concentrated at ~20° N (Rice 1998).

Fin Whale

The fin whale is widely distributed in all the world's oceans (Gambell 1985b), but typically occurs in temperate and polar regions from 20–70° north and south of the Equator (Perry *et al.*, 1999b). Northern and southern fin whale populations are distinct and are sometimes recognized as different subspecies (Aguilar 2009). Fin whales occur in coastal, shelf, and oceanic waters. Sergeant (1977) suggested that fin whales tend to follow steep slope contours, either because they detect them readily or because biological productivity is high along steep contours because of tidal mixing and perhaps current mixing. Stafford *et al.*, (2009) noted that sea-surface temperature is a good predictor variable for fin whale call detections in the North Pacific.

Fin whales appear to have complex seasonal movements and are seasonal migrants; they mate and calve in temperate waters during the winter and migrate to feed at northern latitudes during the summer (Gambell 1985b). The North Pacific population summers from the Chukchi Sea to California and winters from California southwards (Gambell 1985b). Aggregations of fin whales are found year-round off southern and central California (Dohl *et al.*, 1980, 1983; Forney *et al.*, 1995; Barlow 1997) and in the summer off Oregon (Green *et al.*, 1992; Edwards *et al.*, 2015). Vocalizations from fin whales have also been detected year-round off northern California, Oregon, and Washington (Moore *et al.*, 1998, 2006; Watkins *et al.*, 2000a, b; Stafford *et al.*, 2007, 2009; Edwards *et al.*, 2015).

Blue Whale

The blue whale has a cosmopolitan distribution and tends to be pelagic, only coming nearshore to feed and possibly to breed (Jefferson *et al.*, 2015). Although it has been suggested that there are at least five subpopulations of blue whales in the North Pacific (NMFS 1998), analysis of blue whale calls monitored from the U.S. Navy Sound Surveillance System (SOSUS) and other offshore hydrophones (see Stafford *et al.*, 1999, 2001, 2007; Watkins *et al.*, 2000a; Stafford 2003) suggests that there are two separate populations: One in the eastern and one in the western North Pacific (Sears and Perrin 2009). Broad-scale acoustic monitoring indicates that blue whales occurring in the northeast Pacific during summer and fall may winter in the eastern tropical Pacific (Stafford *et al.*, 1999, 2001).

The distribution of the species, at least during times of the year when feeding is a major activity, occurs in areas that provide large seasonal concentrations of euphausiids (Yochem and Leatherwood 1985). The eastern North Pacific stock feeds in California waters from June–November (Calambokidis *et al.*, 1990; Mate *et al.*, 1999). There are nine BIAs for feeding blue whales off the coast of California (Calambokidis *et al.*, 2015), and core areas have also been identified there (Irvine *et al.*, 2014). Blue whales have been detected acoustically off Oregon (McDonald *et al.*, 1995; Stafford *et al.*, 1998; Von Saunder and Barlow 1999), but sightings are uncommon (Carretta *et al.*, 2018). Densities along the U.S. West Coast, including Oregon, were predicted to be highest in shelf waters, with lower densities in deeper offshore areas (Becker *et al.*, 2012; Calambokidis *et al.*, 2015). Buchanan *et al.*, (2001) considered blue whales to be rare off Oregon and Washington. However, based on the absolute dynamic topography of the region, blue whales could occur in relatively high densities off Oregon during July–December (Pardo *et al.*, 2015).

Sperm Whale

The sperm whale is the largest of the toothed whales, with an extensive worldwide distribution (Rice 1989). Sperm whale distribution is linked to social structure: Mixed groups of adult females and juvenile animals of both sexes generally occur in tropical and subtropical waters, whereas adult males are commonly found alone or in same-sex aggregations, often occurring in higher latitudes outside the breeding season (Best 1979; Watkins and Moore 1982; Arnbom and Whitehead 1989; Whitehead and Waters 1990). Males can migrate north in the summer to feed in the Gulf of Alaska, Bering Sea, and waters around the Aleutian Islands (Kasuya and Miyashita 1988). Mature male sperm whales migrate to warmer waters to breed when they are in their late twenties (Best 1979).

Sperm whales generally are distributed over large areas that have high secondary productivity and steep underwater topography, in waters at least 1000 m deep (Jaquet and Whitehead 1996; Whitehead 2009). They are often found far from shore, but can be found closer to oceanic islands that rise steeply from deep ocean waters (Whitehead 2009). Adult males can occur in water depths <100 m and as shallow as 40 m (Whitehead *et al.* 1992; Scott and Sadove 1997). They can dive as deep as ~2 km and possibly deeper on rare occasions for periods of over 1 h; however, most of their foraging occurs at depths of ~300–800 m for 30–45 min (Whitehead 2003).

Sperm whales are distributed widely across the North Pacific (Rice 1989). Off California, they occur year-round (Dohl *et al.,* 1983; Barlow 1995; Forney *et al.,* 1995), with peak abundance from April to mid-June and from August to mid-November (Rice 1974). Off Oregon, sperm whales are seen in every season except winter (Green *et al.,* 1992).

Oleson *et al.* (2009) noted a significant diel pattern in the occurrence of sperm whale clicks at offshore and inshore monitoring locations off Washington, whereby clicks were more commonly heard during the day at the offshore site and were more common at night at the inshore location, suggesting possible diel movements up and down the slope in search of prey. Sperm whale acoustic detections were also reported at the inshore site from June through January 2009, with an absence of calls during February to May (Širović *et al.,* 2012). In addition, sperm whales were sighted during surveys off Washington in June 2011 and off Oregon in October 2011 (Adams *et al.,* 2014).

Pygmy and Dwarf Sperm Whales

The pygmy and dwarf sperm whales are distributed widely throughout tropical and temperate seas, but their precise distributions are unknown as most information on these species comes from strandings (McAlpine 2009). They are difficult to sight at sea, perhaps because of their avoidance reactions to ships and behavior changes in relation to survey aircraft (Würsig *et al.,* 1998). The two species are difficult to distinguish from one another when sighted (McAlpine 2009).

Both *Kogia* species are sighted primarily along the continental shelf edge and slope and over deeper waters off the shelf (Hansen *et al.,* 1994; Davis *et al.,* 1998). Several studies have suggested that pygmy sperm whales live mostly beyond the continental shelf edge, whereas dwarf sperm whales tend to occur closer to shore, often over the continental shelf (Rice 1998; Wang *et al.,* 2002; MacLeod *et al.,* 2004). Barros *et al.,* (1998), on the other hand, suggested that dwarf sperm whales could be more pelagic and dive deeper than pygmy sperm whales. It has also been suggested that the pygmy sperm whale is more temperate and the dwarf sperm whale more tropical, based at least partially on live sightings at sea from a large database from the eastern tropical Pacific (Wade and Gerrodette 1993). This idea is also supported by the

distribution of strandings in South American waters (Muñoz-Hincapié *et al.,* 1998).

Cuvier's Beaked Whale

Cuvier's beaked whale is probably the most widespread of the beaked whales, although it is not found in polar waters (Heyning 1989). Cuvier's beaked whale appears to prefer steep continental slope waters (Jefferson *et al.,* 2015) and is most common in water depths >1,000 m (Heyning 1989). It is mostly known from strandings and strands more commonly than any other beaked whale (Heyning 1989). Its inconspicuous blows, deep-diving behavior, and tendency to avoid vessels all help to explain the infrequent sightings (Barlow and Gisiner 2006). The population in the California Current Large Marine Ecosystem seems to be declining (Moore and Barlow 2013).

MacLeod *et al.,* (2006) reported numerous sightings and strandings along the Pacific coast of the U.S. Cuvier's beaked whale is the most common beaked whale off the U.S. West Coast (Barlow 2010), and it is the beaked whale species that has stranded most frequently on the coasts of Oregon and Washington. From 1942–2010, there were 23 reported Cuvier's beaked whale strandings in Oregon and Washington (Moore and Barlow 2013). Most (75 percent) Cuvier's beaked whale strandings reported occurred in Oregon (Norman *et al.,* 2004).

Blainville's Beaked Whale

Blainville's beaked whale is found in tropical and warm temperate waters of all oceans (Pitman 2009). It has the widest distribution throughout the world of all mesoplodont species and appears to be relatively common (Pitman 2009). Like other beaked whales, Blainville's beaked whale is generally found in waters 200–1400 m deep (Gannier 2000; Jefferson *et al.,* 2015). Occasional occurrences in cooler, higher-latitude waters are presumably related to warm-water incursions (Reeves *et al.,* 2002). MacLeod *et al.,* (2006) reported stranding and sighting records in the eastern Pacific ranging from 37.3° N to 41.5° S. However, none of the 36 beaked whale stranding records in Oregon and Washington during 1930–2002 included Blainville's beaked whale (Norman *et al.,* 2004). One Blainville's beaked whale was found stranded (dead) on the Washington coast in November 2016 (COASST 2016).

Stejneger's Beaked Whale

Stejneger's beaked whale occurs in subarctic and cool temperate waters of the North Pacific Ocean (Mead 1989). In the eastern North Pacific Ocean, it is distributed from Alaska to southern California (Mead *et al.,* 1982; Mead 1989). Most stranding records are from Alaskan waters, and the Aleutian Islands appear to be its center of distribution (MacLeod *et al.,* 2006). After Cuvier's beaked whale, Stejneger's beaked whale was the second most commonly stranded beaked whale species in Oregon and Washington (Norman *et al.,* 2004).

Hubb's Beaked Whale

Hubbs' beaked whale occurs in temperate waters of the North Pacific (Mead 1989). Its distribution appears to be correlated with the deep subarctic current (Mead *et al.,* 1982). Numerous stranding records have been reported for the U.S. West Coast (MacLeod *et al.,* 2006). Most of the records are from California, but it has been sighted as far north as Prince Rupert, British Columbia (Mead 1989). Two strandings are known from Washington/Oregon (Norman *et al.,* 2004). Hubbs' beaked whales are often killed in drift gillnets off California (Reeves *et al.,* 2002).

There are no sightings of Hubbs' beaked whales near the proposed survey area in the OBIS database (OBIS 2018). There is one sighting of an unidentified species of *Mesoplodont* whale near the survey area in the OBIS database that was made in July 1996 during the SWFSC ORCAWALE Marine Mammal Survey (OBIS 2018). During the 2016 SWFSC PASCAL study using drifting acoustic recorders, detections were made of beaked whale sounds presumed to be from Hubbs' beaked whales near the proposed survey area during August (Griffiths *et al.,* submitted manuscript cited in Keating *et al.,* 2018). In addition, at least two sightings just to the south of the proposed survey area were reported in Carretta *et al.,* (2018). This species seems to be less common in the proposed survey area than some of the other beaked whales.

Baird's Beaked Whale

Baird's beaked whale has a fairly extensive range across the North Pacific, with concentrations occurring in the Sea of Okhotsk and Bering Sea (Rice 1998; Kasuya 2009). In the eastern Pacific, Baird's beaked whale is reported to occur as far south as San Clemente Island, California (Rice 1998; Kasuya 2009). Baird's beaked whales that occur off the U.S. west coast are of the gray form, unlike some *Berardius* individuals that are found in Alaska and Japan, which are of the black form and thus could be a new species (Morin *et al.,* 2017).

Bottlenose Dolphin

The bottlenose dolphin is distributed worldwide in coastal and shelf waters of tropical and temperate oceans (Jefferson *et al.,* 2015). There are two distinct bottlenose dolphin types: A shallow water type, mainly found in coastal waters, and a deep water type, mainly found in oceanic waters (Duffield *et al.,* 1983; Hoelzel *et al.,* 1998; Walker *et al.,* 1999). Coastal common bottlenose dolphins exhibit a range of movement patterns including seasonal migration, year-round residency, and a combination of long-range movements and repeated local residency (Wells and Scott 2009).

Short-Beaked Common Dolphin

The short-beaked common dolphin is found in tropical and warm temperate oceans around the world (Perrin 2009). It ranges as far south as 40° S in the Pacific Ocean, is common in coastal waters 200–300 m deep and is also associated with prominent underwater topography, such as seamounts (Evans 1994). Short-beaked common dolphins have been sighted as far as 550 km from shore (Barlow *et al.,* 1997).

The distribution of short-beaked common dolphins along the U.S. West Coast is variable and likely related to oceanographic changes (Heyning and Perrin 1994; Forney and Barlow 1998). It is the most abundant cetacean off California; some sightings have been made off Oregon, in offshore waters (Carretta *et al.,* 2017). During surveys off the west coast in 2014 and 2017, sightings were made as far north as 44° N (Barlow 2016; SIO n.d.). Based on the absolute dynamic topography of the region, short-beaked common dolphins could occur in relatively high densities off Oregon during July–December (Pardo *et al.,* 2015). In contrast, habitat modeling predicted moderate densities of common dolphins off the Columbia River mouth during summer, with lower densities off southern Oregon (Becker *et al.,* 2014).

Striped Dolphin

The striped dolphin has a cosmopolitan distribution in tropical to warm temperate waters (Perrin *et al.,* 1994) and is generally seen south of 43° N (Archer 2009). However, in the eastern North Pacific, its distribution extends as far north as Washington (Jefferson *et al.,* 2015). The striped dolphin is typically found in waters outside the continental shelf and is often associated with convergence zones and areas of upwelling (Archer 2009). However, it has also been observed approaching shore where there is deep

water close to the coast (Jefferson *et al.,* 2015).

Pacific White-Sided Dolphin

The Pacific white-sided dolphin is found in cool temperate waters of the North Pacific from the southern Gulf of California to Alaska. Across the North Pacific, it appears to have a relatively narrow distribution between 38° N and 47° N (Brownell *et al.,* 1999). In the eastern North Pacific Ocean, including waters off Oregon, the Pacific white-sided dolphin is one of the most common cetacean species, occurring primarily in shelf and slope waters (Green *et al.,* 1993; Barlow 2003, 2010). It is known to occur close to shore in certain regions, including (seasonally) southern California (Brownell *et al.,* 1999).

Results of aerial and shipboard surveys strongly suggest seasonal north–south movements of the species between California and Oregon/Washington; the movements apparently are related to oceanographic influences, particularly water temperature (Green *et al.,* 1993; Forney and Barlow 1998; Buchanan *et al.,* 2001). During winter, this species is most abundant in California slope and offshore areas; as northern waters begin to warm in the spring, it appears to move north to slope and offshore waters off Oregon/Washington (Green *et al.,* 1992, 1993; Forney 1994; Forney *et al.,* 1995; Buchanan *et al.,* 2001; Barlow 2003). The highest encounter rates off Oregon and Washington have been reported during March–May in slope and offshore waters (Green *et al.,* 1992). Similarly, Becker *et al.,* (2014) predicted relatively high densities off southern Oregon in shelf and slope waters.

Based on year-round aerial surveys off Oregon/Washington, the Pacific white-sided dolphin was the most abundant cetacean species, with nearly all (97 percent) sightings occurring in May (Green *et al.,* 1992, 1993). Barlow (2003) also found that the Pacific white-sided dolphin was one of the most abundant marine mammal species off Oregon/Washington during 1996 and 2001 ship surveys, and it was the second most abundant species reported during 2008 surveys (Barlow 2010). Adams *et al.,* (2014) reported numerous offshore sightings off Oregon during summer, fall, and winter surveys in 2011 and 2012. Based on surveys conducted during 2014, the abundance was estimated at 20,711 for Oregon/Washington (Barlow 2016).

Northern Right Whale Dolphin

The northern right whale dolphin is found in cool temperate and sub-arctic waters of the North Pacific, from the Gulf of Alaska to near northern Baja California, ranging from 30° N to 50° N (Reeves *et al.,* 2002). In the eastern North Pacific Ocean, including waters off Oregon, the northern right whale dolphin is one of the most common marine mammal species, occurring primarily in shelf and slope waters ~100 to >2,000 m deep (Green *et al.,* 1993; Barlow 2003). The northern right whale dolphin comes closer to shore where there is deep water, such as over submarine canyons (Reeves *et al.,* 2002).

Aerial and shipboard surveys suggest seasonal inshore–offshore and north–south movements in the eastern North Pacific Ocean between California and Oregon/Washington; the movements are believed to be related to oceanographic influences, particularly water temperature and presumably prey distribution and availability (Green *et al.,* 1993; Forney and Barlow 1998; Buchanan *et al.,* 2001). Green *et al.,* (1992, 1993) found that northern right whale dolphins were most abundant off Oregon/Washington during fall, less abundant during spring and summer, and absent during winter, when this species presumably moves south to warmer California waters (Green *et al.,* 1992, 1993; Forney 1994; Forney *et al.,* 1995; Buchanan *et al.,* 2001; Barlow 2003). Considerable interannual variations in abundance also have been found.

Becker *et al.,* (2014) predicted relatively high densities off southern Oregon, and moderate densities off northern Oregon and Washington. Based on year-round aerial surveys off Oregon/Washington, the northern right whale dolphin was the third most abundant cetacean species, concentrated in slope waters but also occurring in water out to ~550 km offshore (Green *et al.,* 1992, 1993). Barlow (2003, 2010) also found that the northern right whale dolphin was one of the most abundant marine mammal species off Oregon/Washington during 1996, 2001, 2005, and 2008 ship surveys. Offshore sightings were made in the waters of Oregon during summer, fall, and winter surveys in 2011 and 2012 (Adams *et al.,* 2014).

Risso's Dolphin

Risso's dolphin is distributed worldwide in temperate and tropical oceans (Baird 2009), although it shows a preference for mid-temperate waters of the shelf and slope between 30° and 45° (Jefferson *et al.,* 2014). Although it is known to occur in coastal and oceanic habitats (Jefferson *et al.,* 2014), it appears to prefer steep sections of the continental shelf, 400–1,000 m deep (Baird 2009), and is known to frequent seamounts and escarpments (Kruse *et al.,* 1999). Off the U.S. West Coast, Risso's dolphin is believed to make seasonal north-south movements related to water temperature, spending colder winter months off California and moving north to waters off Oregon/Washington during the spring and summer as northern waters begin to warm (Green *et al.,* 1992, 1993; Buchanan *et al.,* 2001; Barlow 2003; Becker 2007).

The distribution and abundance of Risso's dolphins are highly variable from California to Washington, presumably in response to changing oceanographic conditions on both annual and seasonal time scales (Forney and Barlow 1998; Buchanan *et al.,* 2001). The highest densities were predicted along the coasts of Washington, Oregon, and central and southern California (Becker *et al.,* 2012). Off Oregon and Washington, Risso's dolphins are most abundant over continental slope and shelf waters during spring and summer, less so during fall, and rare during winter (Green *et al.,* 1992, 1993). Green *et al.,* (1992, 1993) reported most Risso's dolphin groups off Oregon between ~45 and 47° N. Several sightings were made off southern Oregon during surveys in 1991–2014 (Carretta *et al.,* 2017). Sightings during ship surveys in summer/fall 2008 were mostly between ~30 and 38° N; none were reported in Oregon/Washington (Barlow 2010). Based on 2014 survey data, the abundance for Oregon/Washington was estimated at 430 (Barlow 2016).

False Killer Whale

The false killer whale is found in all tropical and warmer temperate oceans, especially in deep, offshore waters (Odell and McClune 1999). However, it is also known to occur in nearshore areas (*e.g.,* Stacey and Baird 1991). In the eastern North Pacific, it has been reported only rarely north of Baja California (Leatherwood *et al.,* 1982, 1987; Mangels and Gerrodette 1994); however, the waters off the U.S. West Coast all the way north to Alaska are considered part of its secondary range (Jefferson *et al.,* 2015). Its occurrence in Washington/Oregon is associated with warm-water incursions (Buchanan *et al.,* 2001). One pod of false killer whales occurred in Puget Sound for several months during the 1990s (USN 2015). Two were reported stranded along the Washington coast during 1930–2002, both in El Niño years (Norman *et al.,* 2004). One sighting was made off southern California during 2014 (Barlow 2016).

Killer Whale

The killer whale is cosmopolitan and globally fairly abundant; it has been observed in all oceans of the world (Ford 2009). It is very common in temperate waters and also frequents tropical waters, at least seasonally (Heyning and Dahlheim 1988). Currently, there are eight killer whale stocks recognized in the U.S. Pacific: (1) Alaska Residents, occurring from southeast Alaska to the Aleutians and Bering Sea; (2) Northern Residents, from BC through parts of southeast Alaska; (3) Southern Residents, mainly in inland waters of Washington State and southern BC; (4) Gulf of Alaska, Aleutians, and Bering Sea Transients, from Prince William Sound (PWS) through to the Aleutians and Bering Sea; (5) AT1 Transients, from PWS through the Kenai Fjords; (6) West Coast Transients, from California through southeast Alaska; (7) Offshore, from California through Alaska; and (8) Hawaiian (Carretta *et al.,* 2018). Individuals from the Offshore and West Coast Transient stocks could be encountered in the proposed project area.

Green *et al.* (1992) noted that most groups seen during their surveys off Oregon and Washington were likely transients; during those surveys, killer whales were sighted only in shelf waters. Killer whales were sighted off Washington in July and September 2012 (Adams *et al.,* 2014). Two of 17 killer whales that stranded in Oregon were confirmed as transient (Stevens *et al.,* 1989 *in* Norman *et al.,* 2004).

Short-Finned Pilot Whale

The short-finned pilot whale is found in tropical, subtropical, and warm temperate waters (Olson 2009); it is seen as far south as ~40° S and as far north as ~50° N (Jefferson *et al.,* 2015). Pilot whales are generally nomadic, but may be resident in certain locations, including California and Hawaii (Olson 2009). Short-finned pilot whales were common off southern California (Dohl *et al.,* 1980) until an El Niño event occurred in 1982–1983 (Carretta *et al.,* 2017).

Dall's Porpoise

Dall's porpoise is found in temperate to subantarctic waters of the North Pacific and adjacent seas (Jefferson *et al.,* 2015). It is widely distributed across the North Pacific over the continental shelf and slope waters, and over deep (≤ 2,500 m) oceanic waters (Hall 1979). It is probably the most abundant small cetacean in the North Pacific Ocean, and its abundance changes seasonally, likely in relation to water temperature (Becker 2007).

Off Oregon and Washington, Dall's porpoise is widely distributed over shelf and slope waters, with concentrations near shelf edges, but is also commonly sighted in pelagic offshore waters (Morejohn 1979; Green *et al.,* 1992; Becker *et al.,* 2014; Carretta *et al.,* 2018). Combined results of various surveys out to ~550 km offshore indicate that the distribution and abundance of Dall's porpoise varies between seasons and years. North–south movements are believed to occur between Oregon/Washington and California in response to changing oceanographic conditions, particularly temperature and distribution and abundance of prey (Green *et al.,* 1992, 1993; Mangels and Gerrodette 1994; Barlow 1995; Forney and Barlow 1998; Buchanan *et al.,* 2001). Becker *et al.,* (2014) predicted high densities off southern Oregon throughout the year, with moderate densities to the north. According to predictive density distribution maps, the highest densities off southern Washington and Oregon occur along the 500-m isobath (Menza *et al.,* 2016).

Encounter rates reported by Green *et al.,* (1992) during aerial surveys off Oregon/Washington were highest in fall, lowest during winter, and intermediate during spring and summer. Encounter rates during the summer were similarly high in slope and shelf waters, and somewhat lower in offshore waters (Green *et al.,* 1992). Dall's porpoise was the most abundant species sighted off Oregon/Washington during 1996, 2001, 2005, and 2008 ship surveys up to ~550 km from shore (Barlow 2003, 2010).

Northern Fur Seal

The northern fur seal is endemic to the North Pacific Ocean and occurs from southern California to the Bering Sea, Sea of Okhotsk, and Sea of Japan (Jefferson *et al.,* 2015). The worldwide population of northern fur seals has declined substantially from 1.8 million animals in the 1950s (Muto *et al.,* 2018). They were subjected to large-scale harvests on the Pribilof Islands to supply a lucrative fur trade. Two stocks are recognized in U.S. waters: The Eastern North Pacific and the California stocks. The Eastern Pacific stock ranges from southern California during winter to the Pribilof Islands and Bogoslof Island in the Bering Sea during summer (Carretta *et al.,* 2018; Muto *et al.,* 2018). Abundance of the Eastern Pacific Stock has been decreasing at the Pribilof Islands since the 1940s and increasing on Bogoslof Island.

Most northern fur seals are highly migratory. During the breeding season, most of the world's population of northern fur seals occurs on the Pribilof and Bogoslof islands (NMFS 2007). The main breeding season is in July (Gentry 2009). Adult males usually occur onshore from May to August, though some may be present until November; females are usually found ashore from June to November (Muto *et al.,* 2018). Nearly all fur seals from the Pribilof Island rookeries are foraging at sea from fall through late spring. In November, females and pups leave the Pribilof Islands and migrate through the Gulf of Alaska to feeding areas primarily off the coasts of BC, Washington, Oregon, and California before migrating north again to the rookeries in spring (Ream *et al.,* 2005; Pelland *et al.,* 2014). Immature seals can remain in southern foraging areas year-round until they are old enough to mate (NMFS 2007). Adult males migrate only as far south as the Gulf of Alaska or to the west off the Kuril Islands (Kajimura 1984). Pups from the California stock also migrate to Washington, Oregon, and northern California after weaning (Lea *et al.,* 2009).

The northern fur seals spends ~90 percent of its time at sea, typically in areas of upwelling along the continental slopes and over seamounts (Gentry 1981). The remainder of its life is spent on or near rookery islands or haulouts. While at sea, northern fur seals usually occur singly or in pairs, although larger groups can form in waters rich with prey (Antonelis and Fiscus 1980; Gentry 1981). Northern fur seals dive to relatively shallow depths to feed: 100–200 m for females, and <400 m for males (Gentry 2009). Tagged adult female fur seals were shown to remain within 200 km of the shelf break (Pelland *et al.,* 2014).

Bonnell *et al.* (1992) noted the presence of northern fur seals year-round off Oregon/Washington, with the greatest numbers (87 percent) occurring in January–May. Northern fur seals were seen as far out from the coast as 185 km, and numbers increased with distance from land; they were 5–6 times more abundant in offshore waters than over the shelf or slope (Bonnell *et al.,* 1992). The highest densities were seen in the Columbia River plume (~46° N) and in deep offshore waters (>2,000 m) off central and southern Oregon (Bonnell *et al.,* 1992). The waters off Washington are a known foraging area for adult females, and concentrations of fur seals were also reported to occur near Cape Blanco, Oregon, at ~42.8° N (Pelland *et al.,* 2014). Tagged adult fur seals were tracked from the Pribilof Islands to the waters off Washington/Oregon/California, with recorded movement

throughout the proposed project area (Pelland *et al.,* 2014).

Guadalupe Fur Seal

Guadalupe fur seals were once plentiful on the California coast, ranging from the Gulf of the Farallones near San Francisco, to the Revillagigedo Islands, Mexico (Aurioles-Gamboa *et al.,* 1999), but they were over-harvested in the 19th century to near extinction. After being protected, the population grew slowly; mature individuals of the species were observed occasionally in the Southern California Bight starting in the 1960s (Stewart *et al.,* 1993), and, in 1997, a female and pup were observed on San Miguel Island (Melin & DeLong, 1999). Since then, a small group has persisted in that area (Aurioles-Gamboa *et al.,* 2010).

The distribution of Guadalupe fur seals and occurrence in the survey area is dependent on life stage and season. During the breeding season, June through August, adult males are expected to be on shore on Guadalupe Island and at smaller rookeries in the San Benito archipelago (Carretta *et al.,* 2017b; Norris, 2017b). No satellite telemetry data are available for adult males; however, following the breeding season most adult males are expected to move north of breeding grounds to forage.

From 2015 through 2017, 26 stranded and rehabilitated fur seals between the ages of 11 and 15 months were released with satellite tags in central California. These animals frequently migrated north of Point Cabrillo and several moved into waters as far north as British Columbia, Canada. However, it is unclear if the migratory patterns of rehabilitated and released fur seals are representative of the free-ranging population migrating north from Guadalupe Island. For example, the rehabilitated fur seals remained closer to shore than the free-ranging fur seals as they migrated north (Norris, 2017b).

The satellite telemetry data indicate that Guadalupe fur seals more than two years old are likely uncommon in the survey area, but a majority of fur seals under two years old may migrate into the survey area and may be present throughout the year (Norris, 2017b). Lambourn *et al.* (2012) described an unusual mortality event during which 29 Guadalupe fur seals were reported stranded throughout the Pacific Northwest from 2007 to 2009. The strandings involved one live adult female and 28 dead yearlings of both sexes. The stranding data support the more recent telemetry data indicating that fur seals less than 2 years of age are more likely to occur in the survey area than older fur seals.

Northern Elephant Seal

The northern elephant seal breeds in California and Baja California, primarily on offshore islands, from Cedros off the west coast of Baja California, north to the Farallons in Central California (Stewart *et al.,* 1994). Pupping has also been observed at Shell Island (~43.3° N) off southern Oregon, suggesting a range expansion (Bonnell *et al.,* 1992; Hodder *et al.,* 1998).

Adult elephant seals engage in two long northward migrations per year, one following the breeding season, and another following the annual molt (Stewart and DeLong 1995). Between the two foraging periods, they return to land to molt, with females returning earlier than males (March–April vs. July–August). After the molt, adults then return to their northern feeding areas until the next winter breeding season. Breeding occurs from December to March (Stewart and Huber 1993). Females arrive in late December or January and give birth within ~1 week of their arrival. Pups are weaned after just 27 days and are abandoned by their mothers. Juvenile elephant seals typically leave the rookeries in April or May and head north, traveling an average of 900–1,000 km. Hindell (2009) noted that traveling likely takes place at depths >200 m. Most elephant seals return to their natal rookeries when they start breeding (Huber *et al.,* 1991).

When not at their breeding rookeries, adults feed at sea far from the rookeries. Males may feed as far north as the eastern Aleutian Islands and the Gulf of Alaska, whereas females feed south of 45° N (Le Boeuf *et al.,* 1993; Stewart and Huber 1993). Adult male elephant seals migrate north via the California current to the Gulf of Alaska during foraging trips, and could potentially be passing through the area off Washington in May and August (migrating to and from molting periods) and November and February (migrating to and from breeding periods), but likely their presence there is transient and short-lived. Adult females and juveniles forage in the California current off California to BC (Le Boeuf *et al.* 1986, 1993, 2000). Bonnell *et al.,* (1992) reported that northern elephant seals were distributed equally in shelf, slope, and offshore waters during surveys conducted off Oregon and Washington, as far as 150 km from shore, in waters >2,000 m deep. Telemetry data indicate that they range much farther offshore than that (Stewart and DeLong 1995).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS—Continued

[NMFS, 2018]

Hearing group	Generalized hearing range *
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. 26 marine mammal species (23 cetacean and three pinniped (two otariid and one phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 1. Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), 15 are classified as mid-frequency cetaceans (*i.e.,* all delphinid and ziphiid species and the sperm whale), and three are classified as high-frequency cetaceans (*i.e.,* harbor porpoise and Kogia spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Active Acoustic Sound Sources

This section contains a brief technical background on sound, the characteristics of certain sound types, and on metrics used in this proposal inasmuch as the information is relevant to the specified activity and to a discussion of the potential effects of the specified activity on marine mammals found later in this document.

Sound travels in waves, the basic components of which are frequency, wavelength, velocity, and amplitude. Frequency is the number of pressure waves that pass by a reference point per unit of time and is measured in hertz (Hz) or cycles per second. Wavelength is the distance between two peaks or corresponding points of a sound wave (length of one cycle). Higher frequency sounds have shorter wavelengths than lower frequency sounds, and typically attenuate (decrease) more rapidly, except in certain cases in shallower water. Amplitude is the height of the sound pressure wave or the ''loudness'' of a sound and is typically described using the relative unit of the dB. A sound pressure level (SPL) in dB is described as the ratio between a measured pressure and a reference pressure (for underwater sound, this is 1 microPascal (μPa)) and is a logarithmic unit that accounts for large variations in amplitude; therefore, a relatively small change in dB corresponds to large changes in sound pressure. The source level (SL) represents the SPL referenced at a distance of 1 m from the source (referenced to 1 μPa) while the received level is the SPL at the listener's position (referenced to 1 μPa).

Root mean square (rms) is the quadratic mean sound pressure over the duration of an impulse. Root mean square is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1983). Root mean square accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units than by peak pressures.

Sound exposure level (SEL; represented as dB re 1 μPa2 - s) represents the total energy contained within a pulse and considers both intensity and duration of exposure. Peak sound pressure (also referred to as zero-to-peak sound pressure or 0-p) is the maximum instantaneous sound pressure measurable in the water at a specified distance from the source and is represented in the same units as the rms sound pressure. Another common metric is peak-to-peak sound pressure (pk-pk), which is the algebraic difference between the peak positive and peak negative sound pressures. Peak-to-peak pressure is typically approximately 6 dB higher than peak pressure (Southall *et al.,* 2007).

When underwater objects vibrate or activity occurs, sound-pressure waves are created. These waves alternately compress and decompress the water as the sound wave travels. Underwater sound waves radiate in a manner similar to ripples on the surface of a pond and may be either directed in a beam or beams or may radiate in all directions (omnidirectional sources), as is the case for pulses produced by the airgun arrays considered here. The compressions and decompressions associated with sound waves are detected as changes in pressure by aquatic life and man-made sound receptors such as hydrophones.

Even in the absence of sound from the specified activity, the underwater environment is typically loud due to ambient sound. Ambient sound is defined as environmental background sound levels lacking a single source or point (Richardson *et al.,* 1995), and the sound level of a region is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* wind and waves, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic (*e.g.,* vessels, dredging, construction) sound. A number of sources contribute to ambient sound, including the following (Richardson *et al.,* 1995):

- *Wind and waves:* The complex interactions between wind and water

surface, including processes such as breaking waves and wave-induced bubble oscillations and cavitation, are a main source of naturally occurring ambient sound for frequencies between 200 Hz and 50 kHz (Mitson, 1995). In general, ambient sound levels tend to increase with increasing wind speed and wave height. Surf sound becomes important near shore, with measurements collected at a distance of 8.5 km from shore showing an increase of 10 dB in the 100 to 700 Hz band during heavy surf conditions;

- *Precipitation:* Sound from rain and hail impacting the water surface can become an important component of total sound at frequencies above 500 Hz, and possibly down to 100 Hz during quiet times;
- *Biological:* Marine mammals can contribute significantly to ambient sound levels, as can some fish and snapping shrimp. The frequency band for biological contributions is from approximately 12 Hz to over 100 kHz; and
- *Anthropogenic:* Sources of ambient sound related to human activity include transportation (surface vessels), dredging and construction, oil and gas drilling and production, seismic surveys, sonar, explosions, and ocean acoustic studies. Vessel noise typically dominates the total ambient sound for frequencies between 20 and 300 Hz. In general, the frequencies of anthropogenic sounds are below 1 kHz and, if higher frequency sound levels are created, they attenuate rapidly. Sound from identifiable anthropogenic sources other than the activity of interest (*e.g.,* a passing vessel) is sometimes termed background sound, as opposed to ambient sound.

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and human activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from a given activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals. Details of source types are described in the following text.

Sounds are often considered to fall into one of two general types: Pulsed and non-pulsed (defined in the following). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Pulsed sound sources (*e.g.,* airguns, explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than one second), broadband, atonal transients (ANSI, 1986, 2005; Harris, 1998; NIOSH, 1998; ISO, 2003) and occur either as isolated events or repeated in some succession. Pulsed sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-pulsed sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI, 1995; NIOSH, 1998). Some of these non-pulsed sounds can be transient signals of short duration but without the essential properties of pulses (*e.g.,* rapid rise time). Examples of non-pulsed sounds include those produced by vessels, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems (such as those used by the U.S. Navy). The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Airgun arrays produce pulsed signals with energy in a frequency range from about 10–2,000 Hz, with most energy radiated at frequencies below 200 Hz. The amplitude of the acoustic wave emitted from the source is equal in all directions (*i.e.,* omnidirectional), but airgun arrays do possess some directionality due to different phase delays between guns in different directions. Airgun arrays are typically tuned to maximize functionality for data acquisition purposes, meaning that sound transmitted in horizontal directions and at higher frequencies is minimized to the extent possible.

Acoustic Effects

Here, we discuss the effects of active acoustic sources on marine mammals.

Potential Effects of Underwater Sound—Please refer to the information given previously (''Description of Active Acoustic Sources'') regarding sound, characteristics of sound types, and metrics used in this document. Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Götz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. We first describe specific manifestations of acoustic effects before providing discussion specific to the use of airgun arrays.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. First is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly as we do not expect that use of airgun arrays are reasonably likely to result in such effects (see below for further discussion). Potential effects from impulsive sound sources can range in severity from effects such as behavioral disturbance or tactile perception to physical discomfort, slight injury of the internal organs and the auditory system, or mortality (Yelverton *et al.,* 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.,* change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007; Zimmer and Tyack, 2007; Tal *et al.,* 2015). The survey activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

Threshold Shift—Marine mammals exposed to high-intensity sound, or to lower-intensity sound for prolonged periods, can experience hearing threshold shift (TS), which is the loss of hearing sensitivity at certain frequency ranges (Finneran, 2015). TS can be permanent (PTS), in which case the loss of hearing sensitivity is not fully recoverable, or temporary (TTS), in which case the animal's hearing threshold would recover over time (Southall *et al.,* 2007). Repeated sound exposure that leads to TTS could cause PTS. In severe cases of PTS, there can be total or partial deafness, while in most cases the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985).

When PTS occurs, there is physical damage to the sound receptors in the ear (*i.e.,* tissue damage), whereas TTS represents primarily tissue fatigue and is reversible (Southall *et al.,* 2007). In addition, other investigators have suggested that TTS is within the normal bounds of physiological variability and tolerance and does not represent physical injury (*e.g.,* Ward, 1997). Therefore, NMFS does not consider TTS to constitute auditory injury.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, and there is no PTS data for cetaceans but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above (a 40-dB threshold shift approximates PTS onset; *e.g.,* Kryter *et al.,* 1966; Miller, 1974) that inducing mild TTS (a 6-dB threshold shift approximates TTS onset; *e.g.,* Southall *et al.,* 2007). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulse sounds (such as airgun pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

For mid-frequency cetaceans in particular, potential protective mechanisms may help limit onset of TTS or prevent onset of PTS. Such mechanisms include dampening of hearing, auditory adaptation, or behavioral amelioration (*e.g.,* Nachtigall and Supin, 2013; Miller *et al.,* 2012; Finneran *et al.,* 2015; Popov *et al.,* 2016).

TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts.

Finneran *et al.* (2015) measured hearing thresholds in three captive bottlenose dolphins before and after exposure to ten pulses produced by a seismic airgun in order to study TTS induced after exposure to multiple pulses. Exposures began at relatively low levels and gradually increased over a period of several months, with the highest exposures at peak SPLs from 196 to 210 dB and cumulative (unweighted) SELs from 193–195 dB. No substantial TTS was observed. In addition, behavioral reactions were observed that indicated that animals can learn behaviors that effectively mitigate noise exposures (although exposure patterns must be learned, which is less likely in wild animals than for the captive animals considered in this study). The authors note that the failure to induce more significant auditory effects likely due to the intermittent nature of exposure, the relatively low peak pressure produced by the acoustic source, and the low-frequency energy in airgun pulses as compared with the frequency range of best sensitivity for dolphins and other mid-frequency cetaceans.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale, harbor porpoise, and Yangtze finless porpoise) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). In general, harbor porpoises have a lower TTS onset than other measured cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes.

Critical questions remain regarding the rate of TTS growth and recovery after exposure to intermittent noise and the effects of single and multiple pulses. Data at present are also insufficient to construct generalized models for recovery and determine the time necessary to treat subsequent exposures as independent events. More information is needed on the relationship between auditory evoked potential and behavioral measures of TTS for various stimuli. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and NMFS (2016a).

Behavioral Effects—Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more

sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997). Observed responses of wild marine mammals to loud pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007). However, many delphinids approach acoustic source vessels with no apparent discomfort or obvious behavioral change (*e.g.,* Barkaszi *et al.,* 2012).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a, b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Visual tracking, passive acoustic monitoring, and movement recording tags were used to quantify sperm whale behavior prior to, during, and following exposure to airgun arrays at received levels in the range 140–160 dB at distances of 7–13 km, following a phase-in of sound intensity and full array exposures at 1–13 km (Madsen *et al.,* 2006; Miller *et al.,* 2009). Sperm whales did not exhibit horizontal avoidance behavior at the surface. However, foraging behavior may have been affected. The sperm whales exhibited 19 percent less vocal (buzz) rate during full exposure relative to post exposure, and the whale that was approached most closely had an extended resting period and did not resume foraging until the airguns had ceased firing. The remaining whales continued to execute foraging dives throughout exposure; however, swimming movements during foraging dives were 6 percent lower during exposure than control periods (Miller *et al.,* 2009). These data raise concerns that seismic surveys may impact foraging behavior in sperm whales, although more data are required to understand whether the differences were due to exposure or natural variation in sperm whale behavior (Miller *et al.,* 2009).

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005, 2006; Gailey *et al.,* 2007, 2016).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals,

humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Cerchio *et al.* (2014) used passive acoustic monitoring to document the presence of singing humpback whales off the coast of northern Angola and to opportunistically test for the effect of seismic survey activity on the number of singing whales. Two recording units were deployed between March and December 2008 in the offshore environment; numbers of singers were counted every hour. Generalized Additive Mixed Models were used to assess the effect of survey day (seasonality), hour (diel variation), moon phase, and received levels of noise (measured from a single pulse during each ten minute sampled period) on singer number. The number of singers significantly decreased with increasing received level of noise, suggesting that humpback whale breeding activity was disrupted to some extent by the survey activity.

Castellote *et al.* (2012) reported acoustic and behavioral changes by fin whales in response to shipping and airgun noise. Acoustic features of fin whale song notes recorded in the Mediterranean Sea and northeast Atlantic Ocean were compared for areas with different shipping noise levels and traffic intensities and during a seismic airgun survey. During the first 72 h of the survey, a steady decrease in song received levels and bearings to singers indicated that whales moved away from the acoustic source and out of the study area. This displacement persisted for a time period well beyond the 10-day duration of seismic airgun activity, providing evidence that fin whales may avoid an area for an extended period in the presence of increased noise. The authors hypothesize that fin whale acoustic communication is modified to compensate for increased background noise and that a sensitization process may play a role in the observed temporary displacement.

Seismic pulses at average received levels of 131 dB re 1 μPa2-s caused blue whales to increase call production (Di Iorio and Clark, 2010). In contrast, McDonald *et al.* (1995) tracked a blue whale with seafloor seismometers and reported that it stopped vocalizing and changed its travel direction at a range of 10 km from the acoustic source vessel (estimated received level 143 dB pk-pk). Blackwell *et al.* (2013) found that bowhead whale call rates dropped significantly at onset of airgun use at sites with a median distance of 41–45 km from the survey. Blackwell *et al.* (2015) expanded this analysis to show that whales actually increased calling rates as soon as airgun signals were detectable before ultimately decreasing calling rates at higher received levels (*i.e.,* 10-minute SELcum of ~127 dB). Overall, these results suggest that bowhead whales may adjust their vocal output in an effort to compensate for noise before ceasing vocalization effort and ultimately deflecting from the acoustic source (Blackwell *et al.,* 2013, 2015). These studies demonstrate that even low levels of noise received far from the source can induce changes in vocalization and/or behavior for mysticetes.

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Humpback whales showed avoidance behavior in the presence of an active seismic array during observational studies and controlled exposure experiments in western Australia (McCauley *et al.,* 2000). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Stone (2015) reported data from at-sea observations during 1,196 seismic surveys from 1994 to 2010. When large arrays of airguns (considered to be 500 in 3 or more) were firing, lateral displacement, more localized

avoidance, or other changes in behavior were evident for most odontocetes. However, significant responses to large arrays were found only for the minke whale and fin whale. Behavioral responses observed included changes in swimming or surfacing behavior, with indications that cetaceans remained near the water surface at these times. Cetaceans were recorded as feeding less often when large arrays were active. Behavioral observations of gray whales during a seismic survey monitored whale movements and respirations pre-during, and post-seismic survey (Gailey *et al.,* 2016). Behavioral state and water depth were the best 'natural' predictors of whale movements and respiration and, after considering natural variation, none of the response variables were significantly associated with seismic survey or vessel sounds.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg 1987; Blecha 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficiently to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003).

Auditory Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995; Erbe *et al.,* 2016). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions.

Under certain circumstances, marine mammals experiencing significant masking could also be impaired from maximizing their performance fitness in survival and reproduction. Therefore, when the coincident (masking) sound is man-made, it may be considered harassment when disrupting or altering critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect, but rather a potential behavioral effect.

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes but are more likely to affect detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark 2009; Holt *et al.,* 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.,* 1995), through amplitude modulation of the signal, or through other compensatory behaviors (Houser and Moore 2014). Masking can be tested directly in captive species (*e.g.,* Erbe 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. There are few studies addressing real-world masking sounds likely to be experienced by marine mammals in the wild (*e.g.,* Branstetter *et al.,* 2013).

Masking affects both senders and receivers of acoustic signals and can potentially have long-term chronic effects on marine mammals at the population level as well as at the individual level. Low-frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, with most of the increase from distant commercial shipping (Hildebrand 2009). All anthropogenic sound sources, but especially chronic and lower-frequency signals (*e.g.,* from vessel traffic),

contribute to elevated ambient sound levels, thus intensifying masking.

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited, although there are few specific data on this. Because of the intermittent nature and low duty cycle of seismic pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in exceptional situations, reverberation occurs for much or all of the interval between pulses (*e.g.,* Simard *et al.,* 2005; Clark and Gagnon 2006), which could mask calls. Situations with prolonged strong reverberation are infrequent. However, it is common for reverberation to cause some lesser degree of elevation of the background level between airgun pulses (*e.g.,* Gedamke 2011; Guerra *et al.,* 2011, 2016; Klinck *et al.,* 2012; Guan *et al.,* 2015), and this weaker reverberation presumably reduces the detection range of calls and other natural sounds to some degree. Guerra *et al.* (2016) reported that ambient noise levels between seismic pulses were elevated as a result of reverberation at ranges of 50 km from the seismic source. Based on measurements in deep water of the Southern Ocean, Gedamke (2011) estimated that the slight elevation of background levels during intervals between pulses reduced blue and fin whale communication space by as much as 36–51 percent when a seismic survey was operating 450–2,800 km away. Based on preliminary modeling, Wittekind *et al.* (2016) reported that airgun sounds could reduce the communication range of blue and fin whales 2000 km from the seismic source. Nieukirk *et al.* (2012) and Blackwell *et al.* (2013) noted the potential for masking effects from seismic surveys on large whales.

Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls usually can be heard between the pulses (*e.g.,* Nieukirk *et al.* 2012; Thode *et al.* 2012; Bröker *et al.* 2013; Sciacca *et al.* 2016). As noted above, Cerchio *et al.* (2014) suggested that the breeding display of humpback whales off Angola could be disrupted by seismic sounds, as singing activity declined with increasing received levels. In addition, some cetaceans are known to change their calling rates, shift their peak frequencies, or otherwise modify their vocal behavior in response to airgun sounds (*e.g.,* Di Iorio and Clark 2010; Castellote *et al.* 2012; Blackwell *et al.* 2013, 2015). The hearing systems of baleen whales are undoubtedly more sensitive to low-frequency sounds than are the ears of the small odontocetes that have been studied directly (*e.g.,* MacGillivray *et al.* 2014). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking. In general, masking effects of seismic pulses are expected to be minor, given the normally intermittent nature of seismic pulses.

Ship Noise

Vessel noise from the *Langseth* could affect marine animals in the proposed survey areas. Houghton *et al.* (2015) proposed that vessel speed is the most important predictor of received noise levels, and Putland *et al.* (2017) also reported reduced sound levels with decreased vessel speed. Sounds produced by large vessels generally dominate ambient noise at frequencies from 20 to 300 Hz (Richardson *et al.* 1995). However, some energy is also produced at higher frequencies (Hermannsen *et al.* 2014); low levels of high-frequency sound from vessels has been shown to elicit responses in harbor porpoise (Dyndo *et al.* 2015). Increased levels of ship noise have been shown to affect foraging by porpoise (Teilmann *et al.* 2015; Wisniewska *et al.* 2018); Wisniewska *et al.* (2018) suggest that a decrease in foraging success could have long-term fitness consequences.

Ship noise, through masking, can reduce the effective communication distance of a marine mammal if the frequency of the sound source is close to that used by the animal, and if the sound is present for a significant fraction of time (*e.g.,* Richardson *et al.* 1995; Clark *et al.* 2009; Jensen *et al.* 2009; Gervaise *et al.* 2012; Hatch *et al.* 2012; Rice *et al.* 2014; Dunlop 2015; Erbe *et al.* 2015; Jones *et al.* 2017; Putland *et al.* 2017). In addition to the frequency and duration of the masking sound, the strength, temporal pattern, and location of the introduced sound also play a role in the extent of the masking (Branstetter *et al.* 2013, 2016; Finneran and Branstetter 2013; Sills *et al.* 2017). Branstetter *et al.* (2013) reported that time-domain metrics are also important in describing and predicting masking. In order to compensate for increased ambient noise, some cetaceans are known to increase the source levels of their calls in the presence of elevated noise levels from shipping, shift their peak frequencies, or otherwise change their vocal behavior (*e.g.,* Parks *et al.* 2011, 2012, 2016a, b; Castellote *et al.* 2012; Melcón *et al.* 2012; Azzara *et al.* 2013; Tyack and Janik 2013; Luís *et al.* 2014; Sairanen 2014; Papale *et al.* 2015; Bittencourt *et al.* 2016; Dahlheim and Castellote 2016; Gospić and Picciulin 2016; Gridley *et al.* 2016; Heiler *et al.* 2016; Martins *et al.* 2016; O'Brien *et al.* 2016; Tenessen and Parks 2016). Harp seals did not increase their call frequencies in environments with increased low-frequency sounds (Terhune and Bosker 2016). Holt *et al.* (2015) reported that changes in vocal modifications can have increased energetic costs for individual marine mammals. A negative correlation between the presence of some cetacean species and the number of vessels in an area has been demonstrated by several studies (*e.g.,* Campana *et al.* 2015; Culloch *et al.* 2016).

Baleen whales are thought to be more sensitive to sound at these low frequencies than are toothed whales (*e.g.,* MacGillivray *et al.* 2014), possibly causing localized avoidance of the proposed survey area during seismic operations. Reactions of gray and humpback whales to vessels have been studied, and there is limited information available about the reactions of right whales and rorquals (fin, blue, and minke whales). Reactions of humpback whales to boats are variable, ranging from approach to avoidance (Payne 1978; Salden 1993). Baker *et al.* (1982, 1983) and Baker and Herman (1989) found humpbacks often move away when vessels are within several kilometers. Humpbacks seem less likely to react overtly when actively feeding than when resting or engaged in other activities (Krieger and Wing 1984, 1986). Increased levels of ship noise have been shown to affect foraging by humpback whales (Blair *et al.* 2016). Fin whale sightings in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015). Minke whales and gray seals have shown slight displacement in response to construction-related vessel traffic (Anderwald *et al.* 2013). Many odontocetes show considerable tolerance of vessel traffic, although they sometimes react at long distances if confined by ice or shallow water, if previously harassed by vessels, or have had little or no recent exposure to ships (Richardson *et al.* 1995). Dolphins of many species tolerate and sometimes approach vessels (*e.g.,* Anderwald *et al.* 2013). Some dolphin species approach moving vessels to ride the bow or stern waves (Williams *et al.* 1992). Pirotta *et al.* (2015) noted that the physical presence of vessels, not just ship noise, disturbed the foraging activity of bottlenose dolphins. Sightings of striped dolphin, Risso's dolphin, sperm whale,

and Cuvier's beaked whale in the western Mediterranean were negatively correlated with the number of vessels in the area (Campana *et al.* 2015).

There are few data on the behavioral reactions of beaked whales to vessel noise, though they seem to avoid approaching vessels (*e.g.,* Würsig *et al.* 1998) or dive for an extended period when approached by a vessel (*e.g.,* Kasuya 1986). Based on a single observation, Aguilar Soto *et al.* (2006) suggest foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels.

In summary, project vessel sounds would not be at levels expected to cause anything more than possible localized and temporary behavioral changes in marine mammals, and would not be expected to result in significant negative effects on individuals or at the population level. In addition, in all oceans of the world, large vessel traffic is currently so prevalent that it is commonly considered a usual source of ambient sound (NSF–USGS 2011).

Ship Strike

Vessel collisions with marine mammals, or ship strikes, can result in death or serious injury of the animal. Wounds resulting from ship strike may include massive trauma, hemorrhaging, broken bones, or propeller lacerations (Knowlton and Kraus, 2001). An animal at the surface may be struck directly by a vessel, a surfacing animal may hit the bottom of a vessel, or an animal just below the surface may be cut by a vessel's propeller. Superficial strikes may not kill or result in the death of the animal. These interactions are typically associated with large whales (*e.g.,* fin whales), which are occasionally found draped across the bulbous bow of large commercial ships upon arrival in port. Although smaller cetaceans are more maneuverable in relation to large vessels than are large whales, they may also be susceptible to strike. The severity of injuries typically depends on the size and speed of the vessel, with the probability of death or serious injury increasing as vessel speed increases (Knowlton and Kraus 2001; Laist *et al.* 2001; Vanderlaan and Taggart 2007; Conn and Silber 2013). Impact forces increase with speed, as does the probability of a strike at a given distance (Silber *et al.* 2010; Gende *et al.* 2011).

Pace and Silber (2005) also found that the probability of death or serious injury increased rapidly with increasing vessel speed. Specifically, the predicted probability of serious injury or death increased from 45 to 75 percent as vessel speed increased from 10 to 14 kn, and exceeded 90 percent at 17 kn. Higher speeds during collisions result in greater force of impact, but higher speeds also appear to increase the chance of severe injuries or death through increased likelihood of collision by pulling whales toward the vessel (Clyne 1999; Knowlton *et al.* 1995). In a separate study, Vanderlaan and Taggart (2007) analyzed the probability of lethal mortality of large whales at a given speed, showing that the greatest rate of change in the probability of a lethal injury to a large whale as a function of vessel speed occurs between 8.6 and 15 kn. The chances of a lethal injury decline from approximately 80 percent at 15 kn to approximately 20 percent at 8.6 kn. At speeds below 11.8 kn, the chances of lethal injury drop below 50 percent, while the probability asymptotically increases toward one hundred percent above 15 kn.

The *Langseth* travels at a speed of 4.1 kn (7.6 km/h) while towing seismic survey gear (LGL 2018). At this speed, both the possibility of striking a marine mammal and the possibility of a strike resulting in serious injury or mortality are discountable. At average transit speed, the probability of serious injury or mortality resulting from a strike is less than 50 percent. However, the likelihood of a strike actually happening is again discountable. Ship strikes, as analyzed in the studies cited above, generally involve commercial shipping, which is much more common in both space and time than is geophysical survey activity. Jensen and Silber (2004) summarized ship strikes of large whales worldwide from 1975–2003 and found that most collisions occurred in the open ocean and involved large vessels (*e.g.,* commercial shipping). No such incidents were reported for geophysical survey vessels during that time period.

It is possible for ship strikes to occur while traveling at slow speeds. For example, a hydrographic survey vessel traveling at low speed (5.5 kn) while conducting mapping surveys off the central California coast struck and killed a blue whale in 2009. The State of California determined that the whale had suddenly and unexpectedly surfaced beneath the hull, with the result that the propeller severed the whale's vertebrae, and that this was an unavoidable event. This strike represents the only such incident in approximately 540,000 hours of similar coastal mapping activity ($p = 1.9 \times 10^{-6}$; 95% CI = $0–5.5 \times 10^{-6}$; NMFS 2013b). In addition, a research vessel reported a fatal strike in 2011 of a dolphin in the Atlantic, demonstrating that it is possible for strikes involving smaller cetaceans to occur. In that case, the incident report indicated that an animal apparently was struck by the vessel's propeller as it was intentionally swimming near the vessel. While indicative of the type of unusual events that cannot be ruled out, neither of these instances represents a circumstance that would be considered reasonably foreseeable or that would be considered preventable.

Although the likelihood of the vessel striking a marine mammal is low, we require a robust ship strike avoidance protocol (see ''Proposed Mitigation''), which we believe eliminates any foreseeable risk of ship strike. We anticipate that vessel collisions involving a seismic data acquisition vessel towing gear, while not impossible, represent unlikely, unpredictable events for which there are no preventive measures. Given the required mitigation measures, the relatively slow speed of the vessel towing gear, the presence of bridge crew watching for obstacles at all times (including marine mammals), and the presence of marine mammal observers, we believe that the possibility of ship strike is discountable and, further, that were a strike of a large whale to occur, it would be unlikely to result in serious injury or mortality. No incidental take resulting from ship strike is anticipated, and this potential effect of the specified activity will not be discussed further in the following analysis.

Stranding—When a living or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci 2002; Geraci and Lounsbury 2005; NMFS 2007). The legal definition for a stranding under the MMPA is that ''(A) a marine mammal is dead and is (i) on a beach or shore of the United States; or (ii) in waters under the jurisdiction of the United States (including any navigable waters); or (B) a marine mammal is alive and is (i) on a beach or shore of the United States and is unable to return to the water; (ii) on a beach or shore of the United States and, although able to return to the water, is in need of apparent medical attention; or (iii) in the waters under the jurisdiction of the United States (including any navigable waters), but is unable to return to its natural habitat under its own power or without assistance.''

Marine mammals strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in

series. However, the cause or causes of most strandings are unknown (Geraci *et al.,* 1976; Eaton 1979; Odell *et al.,* 1980; Best 1982). Numerous studies suggest that the physiology, behavior, habitat relationships, age, or condition of cetaceans may cause them to strand or might pre-dispose them to strand when exposed to another phenomenon. These suggestions are consistent with the conclusions of numerous other studies that have demonstrated that combinations of dissimilar stressors commonly combine to kill an animal or dramatically reduce its fitness, even though one exposure without the other does not produce the same result (Chroussos 2000; Creel 2005; DeVries *et al.,* 2003; Fair and Becker 2000; Foley *et al.,* 2001; Moberg 2000; Relyea 2005a, 2005b; Romero 2004; Sih *et al.,* 2004).

Use of military tactical sonar has been implicated in a majority of investigated stranding events. Most known stranding events have involved beaked whales, though a small number have involved deep-diving delphinids or sperm whales (*e.g.,* Mazzariol *et al.,* 2010; Southall *et al.,* 2013). In general, long duration (~1 second) and high-intensity sounds (≤235 dB SPL) have been implicated in stranding events (Hildebrand 2004). With regard to beaked whales, mid-frequency sound is typically implicated (when causation can be determined) (Hildebrand, 2004). Although seismic airguns create predominantly low-frequency energy, the signal does include a mid-frequency component. We have considered the potential for the proposed surveys to result in marine mammal stranding and have concluded that, based on the best available information, stranding is not expected to occur.

Effects to Prey—Marine mammal prey varies by species, season, and location and, for some, is not well documented. Fish react to sounds which are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pulsed sound on fish, although several are based on studies in support of construction projects (*e.g.,* Scholik and Yan 2001, 2002; Popper and Hastings 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality. The most likely impact to fish from survey activities at the project area would be temporary avoidance of the area. The duration of fish avoidance of a given area after survey effort stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

Information on seismic airgun impacts to zooplankton, which represent an important prey type for mysticetes, is limited. However, McCauley *et al.* (2017) reported that experimental exposure to a pulse from a 150 in^3 airgun decreased zooplankton abundance when compared with controls, as measured by sonar and net tows, and caused a two- to threefold increase in dead adult and larval zooplankton. Although no adult krill were present, the study found that all larval krill were killed after air gun passage. Impacts were observed out to the maximum 1.2 km range sampled.

In general, impacts to marine mammal prey are expected to be limited due to the relatively small temporal and spatial overlap between the proposed survey and any areas used by marine mammal prey species. The proposed use of airguns as part of an active seismic array survey would occur over a relatively short time period (~19 days) at two locations and would occur over a very small area relative to the area available as marine mammal habitat in the northeast Pacific Ocean near the Axial Seamount. We believe any impacts to marine mammals due to adverse effects to their prey would be insignificant due to the limited spatial and temporal impact of the proposed survey. However, adverse impacts may occur to a few species of fish and to zooplankton.

Acoustic Habitat—Acoustic habitat is the soundscape—which encompasses all of the sound present in a particular location and time, as a whole—when considered from the perspective of the animals experiencing it. Animals produce sound for, or listen for sounds produced by, conspecifics (communication during feeding, mating, and other social activities), other animals (finding prey or avoiding predators), and the physical environment (finding suitable habitats, navigating). Together, sounds made by animals and the geophysical environment (*e.g.,* produced by earthquakes, lightning, wind, rain, waves) make up the natural contributions to the total acoustics of a place. These acoustic conditions, termed acoustic habitat, are one attribute of an animal's total habitat.

Soundscapes are also defined by, and acoustic habitat influenced by, the total contribution of anthropogenic sound. This may include incidental emissions from sources such as vessel traffic, or may be intentionally introduced to the marine environment for data acquisition purposes (as in the use of airgun arrays). Anthropogenic noise varies widely in its frequency content, duration, and loudness and these characteristics greatly influence the potential habitat-mediated effects to marine mammals (please see also the previous discussion on masking under ''Acoustic Effects''), which may range from local effects for brief periods of time to chronic effects over large areas and for long durations. Depending on the extent of effects to habitat, animals may alter their communications signals (thereby potentially expending additional energy) or miss acoustic cues (either conspecific or adventitious). For more detail on these concepts see, *e.g.,* Barber *et al.,* 2010; Pijanowski *et al.,* 2011; Francis and Barber 2013; Lillis *et al.,* 2014.

Problems arising from a failure to detect cues are more likely to occur when noise stimuli are chronic and overlap with biologically relevant cues used for communication, orientation, and predator/prey detection (Francis and Barber 2013). Although the signals emitted by seismic airgun arrays are generally low frequency, they would also likely be of short duration and transient in any given area due to the nature of these surveys. As described previously, exploratory surveys such as these cover a large area but would be transient rather than focused in a given location over time and therefore would not be considered chronic in any given location.

In summary, activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat or populations of fish species or on the quality of acoustic habitat. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal

stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of seismic airguns has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) for mysticetes and high frequency cetaceans (*i.e.,* kogiidae spp.), due to larger predicted auditory injury zones for those functional hearing groups. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

Auditory injury is unlikely to occur for mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds given very small modeled zones of injury for those species (up to 43.7 m). Moreover, the source level of the array is a theoretical definition assuming a point source and measurement in the far-field of the source (MacGillivray, 2006). As described by Caldwell and Dragoset (2000), an array is not a point source, but one that spans a small area. In the far-field, individual elements in arrays will effectively work as one source because individual pressure peaks will have coalesced into one relatively broad pulse. The array can then be considered a ''point source.'' For distances within the near-field, *i.e.,* approximately 2–3 times the array dimensions, pressure peaks from individual elements do not arrive simultaneously because the observation point is not equidistant from each element. The effect is destructive interference of the outputs of each element, so that peak pressures in the near-field will be significantly lower than the output of the largest individual element. Here, the 230 dB peak isopleth distances would in all cases be expected to be within the near-field of the array where the definition of source level breaks down. Therefore, actual locations within this distance of the array center where the sound level exceeds 230 dB peak SPL would not necessarily exist. In general, Caldwell and Dragoset (2000) suggest that the near-field for airgun arrays is considered to extend out to approximately 250 m.

In order to provide quantitative support for this theoretical argument, we calculated expected maximum distances at which the near-field would transition to the far-field (Table 5). For a specific array one can estimate the distance at which the near-field transitions to the far-field by:

$$D = \frac{L^2}{4\lambda}$$

with the condition that $D > \lambda$, and where D is the distance, L is the longest dimension of the array, and λ is the wavelength of the signal (Lurton 2002). Given that λ can be defined by:

$$\lambda = \frac{v}{f}$$

where f is the frequency of the sound signal and v is the speed of the sound in the medium of interest, one can rewrite the equation for D as:

$$D = \frac{fL^2}{4v}$$

and calculate D directly given a particular frequency and known speed of sound (here assumed to be 1,500 meters per second in water, although this varies with environmental conditions).

To determine the closest distance to the arrays at which the source level predictions in Table 1 are valid (*i.e.,* maximum extent of the near-field), we calculated D based on an assumed frequency of 1 kHz. A frequency of 1 kHz is commonly used in near-field/far-field calculations for airgun arrays (Zykov and Carr 2014; MacGillivray 2006; NSF and USGS 2011), and based on representative airgun spectrum data and field measurements of an airgun array used on the R/V Marcus G. Langseth, nearly all (greater than 95 percent) of the energy from airgun arrays is below 1 kHz (Tolstoy *et al.,* 2009). Thus, using 1 kHz as the upper cut-off for calculating the maximum extent of the near-field should reasonably represent the near-field extent in field conditions.

If the largest distance to the peak sound pressure level threshold was equal to or less than the longest dimension of the array (*i.e.,* under the array), or within the near-field, then received levels that meet or exceed the threshold in most cases are not expected to occur. This is because within the near-field and within the dimensions of the array, the source levels specified in Table 1 are overestimated and not applicable. In fact, until one reaches a distance of approximately three or four times the near-field distance the average intensity of sound at any given distance from the array is still less than that based on calculations that assume a directional point source (Lurton 2002). The 6,600 in^3 airgun array used in the 2D survey has an approximate diagonal of 28.8 m, resulting in a near-field distance of 138.7 m at 1 kHz (NSF and USGS 2011). Field measurements of this array indicate that the source behaves like multiple discrete sources, rather than a directional point source, beginning at approximately 400 m (deep site) to 1 km (shallow site) from the center of the array (Tolstoy *et al.,* 2009), distances that are actually greater than four times the calculated 140-m near-field distance. Within these distances, the recorded received levels were always lower than would be predicted based on calculations that assume a directional point source, and increasingly so as one moves closer towards the array (Tolstoy *et al.,* 2009). Similarly, the 3,300 in^3 airgun array used in the 3D survey has an approximate diagonal of 17.9 m, resulting in a near-field distance of 53.5 m at 1 kHz (NSF and USGS 2011). Given this, relying on the calculated distances (138.7 m for the 2D survey and 53.5 m for the 3D survey) as the distances at which we expect to be in the near-field is a conservative approach since even beyond this distance the acoustic modeling still overestimates the actual received level. Within the near-field, in order to explicitly evaluate the likelihood of exceeding any particular acoustic threshold, one would need to consider the exact position of the animal, its relationship to individual array elements, and how the individual acoustic sources propagate and their acoustic fields interact. Given that within the near-field and dimensions of the array source levels would be below those in Table 5, we believe exceedance of the peak pressure threshold would only be possible under highly unlikely circumstances.

Therefore, we expect the potential for Level A harassment of mid-frequency cetaceans, otariid pinnipeds, and phocid pinnipeds to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not believe that Level A harassment is a likely outcome for any mid-frequency cetacean, otariid pinniped, or phocid pinniped and do not propose to authorize any Level A harassment for these species.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or

volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. L–DEO's proposed activity includes the use of impulsive seismic sources. Therefore, the 160 dB re 1 μPa (rms) criteria is applicable for analysis of Level B harassment.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive. L–DEO's proposed seismic survey includes the use of impulsive (seismic airguns) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Health group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed 3D survey would acquire data with the 18-airgun array with a total discharge of 3,300 in³ towed at a depth of 10 m. The proposed 2D survey would acquire data using the 36-airgun array with a total discharge of 6,600 in³ at a maximum tow depth of 12 m. L–DEO model results are used to determine the 160-dBrms radius for the 18-airgun array, 36-airgun array, and 40-in³ airgun in deep water (>1,000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by L–DEO's model (Diebold *et al.,* 2010) which uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (approximately 1,600 m), intermediate water depth on the slope (approximately 600–1,100 m), and shallow water (approximately 50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate-water cases, the field measurements cannot be used readily to derive Level A and Level B isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–500 m, which may not intersect all the sound pressure level (SPL) isopleths at their widest point from the sea surface down

to the maximum relevant water depth for marine mammals of ~2,000 m. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data recorded at the deep and slope sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate-water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (Fig. 12 and 14 in Appendix H of NSF–USGS, 2011). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

For deep water (>1,000 m), L–DEO used the deep-water radii obtained from model results down to a maximum water depth of 2000 m. The radii for intermediate water depths (100–1,000 m) were derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (See Fig. 16 in Appendix H of NSF–USGS, 2011).

Measurements have not been reported for the single 40-in^3 airgun. L–DEO model results are used to determine the 160-dB (rms) radius for the 40-in^3 airgun at a 12 m tow depth in deep water (See LGL 2018, Figure A–2). For intermediate-water depths, a correction factor of 1.5 was applied to the deep-water model results.

L–DEO's modeling methodology is described in greater detail in the IHA application (LGL 2018). The estimated distances to the Level B harassment isopleth for the *Langseth's* 18-airgun array, 36-airgun array, and single 40-in^3 airgun are shown in Table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM R/V *Langseth* SEISMIC SOURCES TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Source and volume	Tow depth (m)	Distance (m) [a]
Single Bolt airgun (40 in^3)	12	431
2 strings, 18 airguns (3,300 in^3)	10	3,758
4 strings, 36 airguns (6,600 in^3)	12	6,733

[a] Distance based on L–DEO model results.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2016). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The values for SEL_{cum} and peak SPL for the *Langseth* airgun array were derived from calculating the modified far-field signature (Table 5). The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, when the source is an array of multiple airguns separated in space, the source level from the theoretical farfield signature is not necessarily the best measurement of the source level that is physically achieved at the source (Tolstoy *et al.* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively, as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the large array effect near the source and is calculated as a point source, the modified farfield signature is a more appropriate measure of the sound source level for distributed sound sources, such as airgun arrays. L–DEO used the acoustic modeling methodology as used for Level B harassment with a small grid step of 1 m in both the inline and depth directions. The propagation modeling takes into account all airgun interactions at short distances from the source, including interactions between subarrays which are modeled using the NUCLEUS software to estimate the notional signature and MATLAB software to calculate the pressure signal at each mesh point of a grid.

For a more complete explanation of this modeling approach, please see ''Appendix A: Determination of Mitigation Zones'' in the IHA application.

TABLE 5—MODELED SOURCE LEVELS BASED ON MODIFIED FARFIELD SIGNATURE FOR THE R/V LANGSETH 3,300 in^3 AIRGUN ARRAY, 6,600 in^3 AIRGUN ARRAY, AND SINGLE 40 in^3 AIRGUN

	Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	Phocid pinnipeds (underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	Otariid pinnipeds (underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)
3,300 in^3 airgun array (Peak SPL_{flat})	245.29	250.97	243.61	246.00	251.92
3.300 in^3 airgun array (SEL_{cum})	226.38	226.33	226.66	226.33	227.07
6,600 in^3 airgun array (Peak SPL_{flat})	252.06	252.65	253.24	252.25	252.52
6,600 in^3 airgun array (SEL_{cum})	232.98	232.83	233.08	232.83	232.07
40 in^3 airgun (Peak SPL_{flat})	223.93	N.A.	223.92	223.95	N.A.
40 in^3 airgun (SEL_{cum})	202.99	202.89	204.37	202.89	202.35

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the Langseth's airgun array (modeled in 1 hertz (Hz) bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals specific to each of the three planned surveys provided in the IHA application, potential radial distances to auditory injury zones were then calculated for SEL_{cum} thresholds.

Inputs to the User Spreadsheets in the form of estimated SLs are shown in Table 5. User Spreadsheets used by L–DEO to estimate distances to Level A harassment isopleths for the 18-airgun array, 36-airgun array, and single 40 in^3 airgun for the surveys are shown in Tables A–3, A–6, and A–10 in Appendix A of the IHA application. Outputs from the User Spreadsheets in the form of estimated distances to Level A harassment isopleths for the surveys are shown in Table 6. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} and Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 6—MODELED RADIAL DISTANCES (m) TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Source and volume	LF cetaceans	MF cetaceans	HF cetaceans	Phocid pinnipeds	Otariid pinnipeds
Single Bolt airgun (40 in^3): [a]					
PTS SEL_{cum}	0.5	0	0	0	0
PTS Peak	1.76	0.51	12.5	1.98	0.4
2 strings, 18 airguns (3300 in^3):					
PTS SEL_{cum}	75.6	0	0.3	2.9	0
PTS Peak	23.2	11.2	118.7	25.1	9.9
4 strings, 36 airguns (6600 in^3):					
PTS SEL_{cum}	426.9	0	1.3	13.9	0
PTS Peak	38.9	13.6	268.3	43.7	10.6

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the proposed seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

In developing their IHA application, L–DEO utilized estimates of cetacean densities in the survey area synthesized by Barlow (2016). Observations from NMFS Southwest Fisheries Science Center (SWFSC) ship surveys off of Oregon and Washington (up to 556 km from shore) between 1991 and 2014 were pooled. Systematic, offshore, at-sea survey data for pinnipeds are more limited. To calculate pinniped densities in the survey area, L–DEO utilized methods described in U.S. Navy (2010) which calculated density estimates for pinnipeds off Washington at different times of the year using information on breeding and migration, population estimates from shore counts, and areas used by different species while at sea. The densities calculated by the Navy were updated by L–DEO using stock abundances presented in the latest SARs (*e.g.,* Caretta *et al.,* 2018).

While the IHA application was in review by NMFS, the U.S. Navy published the Marine Species Density Database Phase III for the Northwest Training and Testing (NWTT) Study

Area (Navy 2018). The proposed geophysical survey area is located near the western boundary of the defined NWTT Offshore Study Area.

For several cetacean species, the Navy updated densities estimated by line-transect surveys or mark-recapture studies (*e.g.,* Barlow 2016). These methods usually produce a single value for density that is an averaged estimate across very large geographical areas, such as waters within the U.S. EEZ off California, Oregon, and Washington (referred to as a ''uniform'' density estimate). This is the general approach applied in estimating cetacean abundance in the NMFS stock assessment reports. The disadvantage of these methods is that they do not provide information on varied concentrations of species in sub-regions of very large areas, and do not estimate density for other seasons or timeframes that were not surveyed. More recently, a newer method called spatial habitat modeling has been used to estimate cetacean densities that address some of these shortcomings (*e.g.,* Barlow *et al.,* 2009; Becker *et al.,* 2010, 2012a, 2014; Becker *et al.,* 2016; Ferguson *et al.,* 2006; Forney *et al.,* 2012, 2015; Redfern *et al.,* 2006). (Note that spatial habitat models are also referred to as ''species distribution models'' or ''habitat-based density models.'') These models estimate density as a continuous function of habitat variables (*e.g.,* sea surface temperature, seafloor depth) and thus, within the study area that was modeled, densities can be predicted at all locations where these habitat variables can be measured or estimated. Spatial habitat models therefore allow estimates of cetacean densities on finer scales than traditional line-transect or mark-recapture analyses.

The methods used to estimate pinniped at-sea densities are typically different than those used for cetaceans, because pinnipeds are not limited to the water and spend a significant amount of time on land (*e.g.,* at rookeries). Pinniped abundance is generally estimated via shore counts of animals on land at known haulout sites or by counting number of pups weaned at rookeries and applying a correction factor to estimate the abundance of the population (for example Harvey *et al.,* 1990; Jeffries *et al.,* 2003; Lowry 2002; Sepulveda *et al.,* 2009). Estimating in-water densities from land-based counts is difficult given the variability in foraging ranges, migration, and haulout behavior between species and within each species, and is driven by factors such as age class, sex class, breeding cycles, and seasonal variation. Data such as age class, sex class, and seasonal variation are often used in conjunction with abundance estimates from known haulout sites to assign an in-water abundance estimate for a given area. The total abundance divided by the area of the region provides a representative in-water density estimate for each species in a different location, which enables analyses of in-water stressors resulting from at-sea Navy testing or training activities. In addition to using shore counts to estimate pinniped density, traditional line-transect derived estimates are also used, particularly in open ocean areas.

Because the Navy's density calculations for many species included spatial habitat modeling and demographic information, we utilized the Navy Marine Species Density Database (NMSDD) to estimate densities and resulting take of marine mammals from the proposed geophysical survey. Where available, the appropriate seasonal density estimate from the NMSDD was used in the estimation here (*i.e.,* summer). For species with a quantitative density range within or around the proposed survey area, the maximum presented density was conservatively used. Background information on the density calculations for each species/guild as well as reported sightings in nearby waters are reported here. Density estimates for each species/guild are found in Table 7.

Humpback Whale

NMFS SWFSC developed a CCE habitat-based density model for humpback whales which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Six humpback whale sightings (8 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey; all were well inshore of the proposed survey area (RPS 2012b). There were 98 humpback whale sightings (213 animals) made during the July 2012 L–DEO seismic survey off southern Washington, northeast of the proposed survey area (RPS 2012a), and 11 sightings (23 animals) during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c). No sightings were made near the proposed survey area in the 2014 NMFS Southwest Fisheries Science Center (SWFSC) California Current Ecosystem (CCE) vessel survey (Barlow 2016).

Minke Whale

Density values for minke whales are available for the SWFSC Oregon/Washington and Northern California offshore strata for summer/fall (Barlow 2016). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so data from the SWFSC Oregon/Washington stratum were used as representative estimates.

Sightings have been made off Oregon and Washington in shelf and deeper waters (Green *et al.,* 1992; Adams *et al.,* 2014; Carretta *et al.,* 2017). An estimated abundance of 211 minke whales was reported for the Oregon/Washington region based on sightings data from 1991–2005 (Barlow and Forney 2007), whereas a 2008 survey did not record any minke whales while on survey effort (Barlow 2010). The abundance for Oregon/Washington for 2014 was estimated at 507 minke whales (Barlow 2016). There were no sightings of minke whales off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey or during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012b, c). One minke whale was seen during the July 2012 L–DEO seismic survey off southern Washington, north of the proposed survey area (RPS 2012a). No sightings of minke whales were made near the proposed survey area during the 2014 SWFSC CCE vessel survey (Barlow 2016).

Sei Whale

Density values for sei whales are available for the SWFSC Oregon/Washington and Northern California offshore strata for summer/fall (Barlow 2016). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so data from the SWFSC Oregon/Washington stratum were used as representative estimates.

Sei whales are rare in the waters off California, Oregon, and Washington (Brueggeman *et al.,* 1990; Green *et al.,* 1992; Barlow 1994, 1997). Only 16 confirmed sightings were reported for California, Oregon, and Washington during extensive surveys from 1991–2014 (Green *et al.,* 1992, 1993; Hill and Barlow 1992; Carretta and Forney 1993; Mangels and Gerrodette 1994; Von Saunder and Barlow 1999; Barlow 2003; Forney 2007; Barlow 2010; Carretta *et al.,* 2017). Based on surveys conducted in 1991–2008, the estimated abundance

of sei whales off the coasts of Oregon and Washington was 52 (Barlow 2010); for 2014, the abundance estimate was 468 (Barlow 2016). Two sightings of four individuals were made during the June–July 2012 L–DEO Juan de Fuca plate seismic survey off Washington/Oregon (RPS 2012b); these were well inshore of the proposed survey area (~125° W). No sei whales were sighted during the July 2012 L–DEO seismic surveys north and south of the proposed survey area (RPS 2012a, c).

Fin Whale

NMFS SWFSC developed a CCE habitat-based density model for fin whales which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Fin whales are routinely sighted during surveys off Oregon and Washington (Barlow and Forney 2007; Barlow 2010; Adams *et al.,* 2014; Calambokidis *et al.,* 2015; Edwards *et al.,* 2015; Carretta *et al.,* 2017), including in coastal as well as offshore waters. They have also been detected acoustically near the proposed study area during June–August (Edwards *et al.,* 2015). There is one sighting of a fin whale in the Ocean Biogeographic Information System (OBIS) database within the proposed survey area, which was made in August 2005 during the SWFSC Collaborative Survey of Cetacean Abundance and the Pelagic Ecosystem (CSCAPE) Marine Mammal Survey, and several other sightings in adjacent waters (OBIS 2018). Eight fin whale sightings (19 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey, including two sightings (4 animals) in the vicinity of the proposed survey area; sightings were made in waters 2,369–3,940 m deep (RPS 2012b). Fourteen fin whale sightings (28 animals) were made during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). No fin whales were sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c). Fin whales were also seen off southern Oregon during July 2012 in water >2,000 m deep during surveys by Adams *et al.* (2014).

Blue Whale

NMFS SWFSC developed a CCE habitat-based density model for blue whales which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

The nearest sighting of blue whales is ~55 km to the southwest (OBIS 2018), and there are several other sightings in adjacent waters (Carretta *et al.,* 2018; OBIS 2018). Satellite telemetry suggests that blue whales are present in waters offshore of Oregon and Washington during fall and winter (Bailey *et al.,* 2009; Hazen *et al.,* 2017).

Sperm Whale

NMFS SWFSC developed a CCE habitat-based density model for sperm whales which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

There is one sighting of a sperm whale in the vicinity of the survey area in the OBIS database that was made in July 1996 during the SWFSC ORCAWALE Marine Mammal Survey (OBIS 2018), and several other sightings in adjacent waters (Carretta *et al.,* 2018; OBIS 2018). Sperm whale sightings were also made in the vicinity of the proposed survey area during the 2014 SWFSC vessel survey (Barlow 2016). A single sperm whale was sighted during the 2009 ETOMO survey, north of the proposed survey area (Holst 2017). Sperm whales were detected acoustically in waters near the proposed survey area in August 2016 during the SWFSC Passive Acoustics Survey of Cetacean Abundance Levels (PASCAL) study using drifting acoustic recorders (Keating *et al.,* 2018).

Pygmy and Dwarf Sperm Whales (*Kogia* Guild)

Kogia species are treated as a guild off the U.S. West Coast (Barlow & Forney 2007). Barlow (2016) provided stratified density estimates for *Kogia* spp. for waters off California, Oregon, and Washington; these were used for all seasons for both the Northern California and Oregon/Washington strata. In the absence of other data, the Barlow (2016) Oregon/Washington estimate was also used for the area northwest of the SWFSC strata for all seasons.

Pygmy and dwarf sperm whales are rarely sighted off Oregon and Washington, with only one sighting of an unidentified *Kogia* sp. beyond the U.S. EEZ, during the 1991–2014 NOAA vessel surveys (Carretta *et al.,* 2017). This sighting was made in October 1993 during the SWFSC PODS Marine Mammal Survey ~150 km to the south of the proposed survey area (OBIS 2018). Norman *et al.* (2004) reported eight confirmed stranding records of pygmy sperm whales for Oregon and Washington, five of which occurred during autumn and winter.

Baird's Beaked Whale

NMFS SWFSC developed a CCE habitat-based density model for Baird's beaked whale which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Green *et al.* (1992) sighted five groups during 75,050 km of aerial survey effort in 1989–1990 off Washington/Oregon spanning coastal to offshore waters: Two in slope waters and three in offshore waters. Two groups were sighted during summer/fall 2008 surveys off Washington/Oregon, in waters >2,000 m deep (Barlow 2010). Acoustic monitoring offshore Washington detected Baird's beaked whale pulses during January through November 2011, with peaks in February and July (Ŝirović *et al.,* 2012b *in* USN 2015). Baird's beaked whales were detected acoustically near the proposed survey area in August 2016 during the SWFSC PASCAL study using drifting acoustic recorders (Keating *et al.,* 2018). There is one sighting of a Baird's beaked whale near the survey area in the OBIS database that was made in August 2005 during the SWFSC CSCAPE Marine Mammal Survey (OBIS 2018).

Small Beaked Whale Guild

NMFS has developed habitat-based density models for a small beaked whale guild in the CCE (Becker *et al.,* 2012b; Forney *et al.,* 2012). The small beaked whale guild includes Cuvier's beaked whale and beaked whales of the genus *Mesoplodon,* including Blainville's beaked whale, Hubbs' beaked whale, and Stejneger's beaked whale. NMFS SWFSC developed a CCE habitat-based density model for the small beaked whale guild which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Four beaked whale sightings were reported in water depths >2,000 m off Oregon/Washington during surveys in 2008 (Barlow 2010). None were seen in 1996 or 2001 (Barlow 2003), and several were recorded from 1991 to 1995 (Barlow 1997). One Cuvier's beaked whale sighting was made east of the proposed survey area during 2014 (Barlow 2016). Acoustic monitoring in Washington offshore waters detected Cuvier's beaked whale pulses between January and November 2011 (Ŝirović *et al.,* 2012b *in* USN 2015). There is one sighting of a Cuvier's beaked whale near the proposed survey area in the OBIS database that was made in July 1996 during the SWFSC ORCAWALE Marine Mammal Survey (OBIS 2018), and several other sightings were made in adjacent waters, primarily to the south and east of the proposed survey area (Carretta *et al.,* 2018; OBIS 2018). Cuvier's beaked whales were detected acoustically in waters near the proposed survey area in August 2016 during the SWFSC PASCAL study using drifting acoustic recorders (Keating *et al.,* 2018).

There are no sightings of Blainville's beaked whales near the proposed survey area in the OBIS database (OBIS 2018). There is one sighting of an unidentified species of Mesoplodont whale near the survey area in the OBIS database that was made in July 1996 during the SWFSC ORCAWALE Marine Mammal Survey (OBIS 2018). There was one acoustic encounter with Blainville's beaked whales recorded in Quinault Canyon off Washington in waters 1,400 m deep during 2011 (Baumann-Pickering *et al.,* 2014). Blainville's beaked whales were not detected acoustically in waters near the proposed survey area in August 2016 during the SWFSC PASCAL study using drifting acoustic recorders (Keating *et al.,* 2018). Although Blainville's beaked whales could be encountered during the proposed survey, an encounter would be unlikely because the proposed survey area is beyond the northern limits of this tropical species' usual distribution.

Stejneger's beaked whale calls were detected during acoustic monitoring offshore Washington between January and June 2011, with an absence of calls from mid-July to November 2011 (Ŝirović *et al.,* 2012b *in* USN 2015). Analysis of these data suggest that this species could be more than twice as prevalent in this area than Baird's beaked whale (Baumann-Pickering *et al.,* 2014). Stejneger's beaked whales were also detected acoustically in waters near the proposed survey area in August 2016 during the SWFSC PASCAL study using drifting acoustic recorders (Keating *et al.,* 2018). There are no sightings of Stejneger's beaked whales near the proposed survey area in the OBIS database (OBIS 2018). There is one sighting of an unidentified species of *Mesoplodont* beaked whale near the survey area in the OBIS database that was made during July 1996 during the SWFSC ORCAWALE Marine Mammal Survey (OBIS 2018).

Baird's beaked whale is sometimes seen close to shore where deep water approaches the coast, but its primary habitat is over or near the continental slope and oceanic seamounts (Jefferson *et al.,* 2015). Along the U.S. West Coast, Baird's beaked whales have been sighted primarily along the continental slope (Green *et al.,* 1992; Becker *et al.,* 2012; Carretta *et al.,* 2018) from late spring to early fall (Green *et al.,* 1992). The whales move out from those areas in winter (Reyes 1991). In the eastern North Pacific Ocean, Baird's beaked whales apparently spend the winter and spring far offshore, and in June, they move onto the continental slope, where peak numbers occur during September and October. Green *et al.* (1992) noted that Baird's beaked whales on the U.S. West Coast were most abundant in the summer, and were not sighted in the fall or winter. MacLeod *et al.* (2006) reported numerous sightings and strandings of *Berardius* spp. off the U.S. West Coast.

Bottlenose Dolphin

During surveys off the U.S. West Coast, offshore bottlenose dolphins were generally found at distances greater than 1.86 miles (3 km) from the coast and were most abundant off southern California (Barlow 2010, 2016). Based on sighting data collected by SWFSC during systematic surveys in the Northeast Pacific between 1986 and 2005, there were few sightings of offshore bottlenose dolphins north of about 40° N (Hamilton *et al.,* 2009). NMFS SWFSC developed a CCE habitat-based density model for bottlenose dolphins which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Bottlenose dolphins occur frequently off the coast of California, and sightings have been made as far north as 41° N, but few records exist for Oregon/Washington (Carretta *et al.,* 2017). Three sightings and one stranding of bottlenose dolphins have been documented in Puget Sound since 2004 (Cascadia Research 2011 *in* USN 2015). It is possible that offshore bottlenose dolphins may range as far north as the proposed survey area during warm-water periods (Carretta *et al.,* 2017). Adams *et al.* (2014) made one sighting off Washington during September 2012. There are no sightings of bottlenose dolphins near the proposed survey area in the OBIS database (OBIS 2018).

Striped Dolphin

Striped dolphin encounters increase in deep, relatively warmer waters off the U.S. West Coast, and their abundance decreases north of about 42° N (Barlow *et al.,* 2009; Becker *et al.,* 2012b; Becker *et al.,* 2016; Forney *et al.,* 2012). Although striped dolphins typically do not occur north of California, there are a few sighting records off Oregon and Washington (Barlow 2003, 2010; Von Saunder & Barlow 1999), and multiple sightings in 2014 when water temperatures were anomalously warm (Barlow 2016). NMFS SWFSC developed a CCE habitat-based density model for striped dolphins which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the

nearest-neighbor approach to provide representative density estimates for this area.

Striped dolphins regularly occur off California (Becker *et al.,* 2012), where they have been seen as far as the ~300 n.mi. limit during the NOAA Fisheries vessel surveys (Carretta *et al.,* 2017). Strandings have occurred along the coasts of Oregon and Washington (Carretta *et al.,* 2016). During surveys off the U.S. West Coast in 2014, striped dolphins were seen as far north as 44° N (Barlow 2016).

Short-Beaked Common Dolphin

Short-beaked common dolphins are found off the U.S. West Coast throughout the year, distributed between the coast and at least 345 miles (556 km) from shore (Barlow 2010; Becker *et al.,* 2017; Carretta *et al.,* 2017b). The short-beaked common dolphin is the most abundant cetacean species off California (Barlow 2016; Carretta *et al.,* 2017b; Forney *et al.,* 1995); however, their abudance decreases dramatically north of about 40° N (Barlow *et al.,* 2009; Becker *et al.,* 2012c; Becker *et al.,* 2016; Forney *et al.,* 2012). Short-beaked common dolphins are occasionally sighted in waters off Oregon and Washington, and one group of approximately 40 short-beaked common dolphins was sighted off northern Washington in 2005 at about 48° N (Forney 2007), and multiple groups were sighted as far north as 44° N during anomalously warm conditions in 2014 (Barlow 2016). NMFS SWFSC developed a CCE habitat-based density model for short-beaked common dolphins which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

There are no sightings of short-beaked dolphins near the proposed survey area in the OBIS database (OBIS 2018).

Pacific White-Sided Dolphin

Pacific white-sided dolphins occur year-round in the offshore region of the NWTT Study Area, with increased abundance in the summer/fall (Barlow 2010; Forney & Barlow 1998; Oleson *et al.,* 2009). NMFS SWFSC developed a CCE habitat-based density model for Pacific white-sided dolphins which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Fifteen Pacific white-sided dolphin sightings (231 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey; none were near the proposed survey area (RPS 2012b). There were fifteen Pacific white-sided dolphin sightings (462 animals) made during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c). One group of 10 Pacific white-sided dolphins was sighted during the 2009 ETOMO survey north of the proposed survey area (Holst 2017).

Northern Right Whale Dolphin

Survey data suggest that, at least in the eastern North Pacific, seasonal inshore-offshore and north-south movements are related to prey availability, with peak abundance in the Southern California Bight during winter and distribution shifting northward into Oregon and Washington as water temperatures increase during late spring and summer (Barlow 1995; Becker *et al.,* 2014; Forney *et al.,* 1995; Forney & Barlow 1998; Leatherwood & Walker 1979). NMFS SWFSC developed a CCE habitat-based density model for northern right whale dolphins which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Seven northern right whale dolphin sightings (231 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey; none were seen near the proposed survey area (RPS 2012b). There were eight northern right whale dolphin sightings (278 animals) made during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c).

Risso's Dolphin

NMFS SWFSC developed a CCE habitat-based density model for Risso's dolphins which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Two sightings of 38 individuals were recorded off Washington from August 2004 to September 2008 (Oleson *et al.,* 2009). Risso's dolphins were sighted off Oregon, in June and October 2011 (Adams *et al.,* 2014). There were three Risso's dolphin sightings (31 animals) made during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c), or off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey (RPS 2012b).

False Killer Whale

False killer whales were not included in the NMSDD, as they are very rarely encountered in the northeast Pacific. Density estimates for false killer whales were also not presented in Barlow (2016), as no sightings occurred during surveys conducted between 1986 and 2008 (Ferguson and Barlow 2001, 2003; Forney 2007; Barlow 2003, 2010). One sighting was made off of southern California during 2014 (Barlow 2016). There are no sightings of false killer whales near the survey area in the OBIS database (OBIS 2018).

Killer Whale

Due to the difficulties associated with reliably distinguishing the different stocks of killer whales from at-sea sightings, density estimates for the Offshore region of the NWTT Study Area are presented for the species as a whole (*i.e.,* includes the Offshore, West

Coast Transient, Northern Resident, and Southern Resident stocks). Density values for killer whales are available for the SWFSC Oregon/Washington and Northern California offshore strata for summer/fall (Barlow 2016). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so data from the SWFSC Oregon/Washington stratum were used as representative estimates. These values were used to represent density year-round.

Eleven sightings of ~536 individuals were reported off Oregon/Washington during the 2008 SWFSC vessel survey (Barlow 2010). Killer whales were sighted offshore Washington during surveys from August 2004 to September 2008 (Oleson *et al.,* 2009). Keating *et al.* (2015) analyzed cetacean whistles from recordings made during 2000–2012; several killer whale acoustic detections were made offshore Washington.

Short-Finned Pilot Whale

Along the U.S. West Coast, short-finned pilot whales were once common south of Point Conception, California (Carretta *et al.,* 2017b; Reilly & Shane 1986), but now sightings off the U.S. West Coast are infrequent and typically occur during warm water years (Carretta *et al.,* 2017b). Stranding records for this species from Oregon and Washington waters are considered to be beyond the normal range of this species rather than an extension of its range (Norman *et al.,* 2004). Density values for short-finned pilot whales are available for the SWFSC Oregon/Washington and Northern California strata for summer/fall (Barlow 2016). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so data from the SWFSC Oregon/Washington stratum were used as representative estimates. These values were used to represent density year-round.

Few sightings were made off California/Oregon/Washington in 1984–1992 (Green *et al.,* 1992; Carretta and Forney 1993; Barlow 1997), and sightings remain rare (Barlow 1997; Buchanan *et al.,* 2001; Barlow 2010). No short-finned pilot whales were seen during surveys off Oregon and Washington in 1989–1990, 1992, 1996, and 2001 (Barlow 2003). A few sightings were made off California during surveys in 1991–2014 (Barlow 2010). Carretta *et al.* (2017) reported one sighting off Oregon during 1991–2008. Several stranding events in Oregon/southern Washington have been recorded over the past few decades, including in March 1996, June 1998, and August 2002 (Norman *et al.,* 2004).

Dall's Porpoise

NMFS SWFSC developed a CCE habitat-based density model for Dall's porpoise which provides spatially explicit density estimates off the U.S. West Coast for summer and fall based on survey data collected between 1991 and 2014 (Becker *et al., in prep*). Density data are not available for the NWTT Offshore area northwest of the SWFSC strata, so the habitat-based density values in the northernmost pixels adjoining this region were interpolated based on the nearest-neighbor approach to provide representative density estimates for this area.

Oleson *et al.* (2009) reported 44 sightings of 206 individuals off Washington during surveys form August 2004 to September 2008. Dall's porpoise were seen in the waters off Oregon during summer, fall, and winter surveys in 2011 and 2012 (Adams *et al.,* 2014). Nineteen Dall's porpoise sightings (144 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey; none were in near the proposed survey area (RPS 2012b). There were 16 Dall's porpoise sightings (54 animals) made during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c). Dall's porpoise was the most frequently sighted marine mammal species (5 sightings of 28 animals) during the 2009 ETOMO survey north of the proposed survey area (Holst 2017).

Northern Fur Seal

The Navy estimated the abundance of northern fur seals from the Eastern Pacific stock and the California breeding stock that could occur in the NWTT Offshore Study Area by determining the percentage of time tagged animals spent within the Study Area and applying that percentage to the population to calculate an abundance for adult females, juveniles, and pups independently on a monthly basis. Adult males are not expected to occur within the Offshore Study Area and the proposed survey area during the proposed geophysical survey as they spend the summer ashore at breeding areas in the Bering Sea and San Miguel Island (Caretta *et al.,* 2017b). Using the monthly abundances of fur seals within the Offshore Study Area, the Navy created strata to estimate the density of fur seals within three strata: 22 km to 70 km from shore, 70 km to 130 km from shore, and 130 km to 463 km from shore (the western Study Area boundary). L–DEO's proposed survey is 423 km from shore at the closest point. Based on satellite tag data and historic sealing records (Olesiuk 2012; Kajimura 1984), the Navy assumed 25 percent of the population present within the overall Offshore Study Area may be within the 130 km to 463 km stratum.

Thirty-one northern fur seal sightings (63 animals) were made off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey north of the proposed survey area (RPS 2012b). There were six sightings (6 animals) made during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c).

Guadalupe Fur Seal

As with northern fur seals, adult male Guadalupe fur seals are expected to be ashore at breeding areas over the summer, and are not expected to be present during the proposed geophysical survey (Caretta *et al.,* 2017b; Norris 2017b). Additionally, breeding females are unlikely to be present within the Offshore Study Area as they remain ashore to nurse their pups through the fall and winter, making only short foraging trips from rookeries (Gallo-Reynoso *et al.,* 2008; Norris 2017b; Yochem *et al.,* 1987). To estimate the total abundance of Guadalupe fur seals, the Navy adjusted the population reported in the 2016 SAR (Caretta *et al.,* 2017b) of 20,000 seals by applying the average annual growth rate of 7.64 percent over the seven years between 2010 and 2017. The resulting 2017 projected abundance was 33,485 fur seals. Using the reported composition of the breeding population of Guadalupe fur seals (Gallo-Reynoso 1994) and satellite telemetry data (Norris 2017b), the Navy established seasonal and demographic abundances of fur seals expected to occur within the Offshore Study Area.

The distribution of Guadalupe fur seals in the Offshore Study Area was stratified by distance from shore (or water depth) to reflect their preferred pelagic habitat (Norris 2017a). Ten percent of fur seals in the Study Area are expected to use waters over the continental shelf (approximated as waters with depths between 10 and 200 m). A depth of 10 m is used as the shoreward extent of the shelf (rather than extending to shore), because Guadalupe fur seals in the Offshore

Study Area are not expected to haul out and would not be likely to come close to shore. All fur seals (*i.e.,* 100 percent) would use waters off the shelf (beyond the 200 m isobath) out to 300 km from shore, and 25 of percent of fur seals would be expected to use waters between 300 and 700 km from shore (including the proposed geophysical survey area). The second stratum (200 m to 300 km from shore) is the preferred habitat where Guadalupe fur seals are most likely to occur most of the time. Individuals may spend a portion of their time over the continental shelf or farther than 300 km from shore, necessitating a density estimate for those areas, but all Guadalupe fur seals would be expected to be in the central stratum most of the time, which is the reason 100 percent is used in the density estimate for the central stratum (Norris 2017a). Spatial areas for the three strata were estimated in a GIS and used to calculate the densities.

Guadalupe fur seals have not previously been observed in the proposed survey area, nor on previous L–DEO surveys off Washington and Oregon.

Northern Elephant Seal

The most recent surveys supporting the abundance estimate for northern elephant seals were conducted in 2010 (Caretta *et al.,* 2017b). By applying the average growth rate of 3.8 percent per year for the California breeding stock over the seven years from 2010 to 2017, the Navy calculated a projected 2017 abundance estimate of 232,399 elephant seals (Caretta *et al.,* 2017b; Lowry *et al.,* 2014). Male and female distributions at sea differ both seasonally and spatially. Pup counts reported by Lowry *et al.* (2014) and life tables compiled by Condit *et al.* (2014) were used to determine the proportion of males and females in the population, which was estimated to be 56 percent female and 44 percent male. Females are assumed to be at sea 100 percent of the time within their seasonal distribution area in fall and summer (Robinson *et al.,* 2012). Males are at sea approximately 90 percent of the time in fall and spring, remain ashore through the entire winter, and spend one month ashore to molt in the summer (*i.e.,* are at sea 66 percent of the summer). Monthly distribution maps produced by Robinson *et al.* (2012) showing the extent of foraging areas used by satellite tagged female elephant seals were used to estimate the spatial areas to calculate densities. Although the distributions were based on tagged female seals, Le Boeuf *et al.* (2000) and Simmons *et al.* (2007) reported similar tracks by males over broad spatial scales. The spatial areas representing each monthly distribution were calculating using GIS and then averaged to produce seasonally variable areas and resulting densities.

Off Washington, most elephant seal sightings at sea were made during June, July, and September; off Oregon, sightings were recorded from November through May (Bonnell *et al.* 1992). Several seals were seen off Oregon during summer, fall, and winter surveys in 2011 and 2012 (Adams *et al.* 2014). Northern elephant seals were also taken as bycatch off Oregon in the west coast groundfish fishery during 2002–2009 (Jannot *et al.* 2011). Northern elephant seals were sighted five times (5 animals) during the July 2012 L–DEO seismic surveys off southern Washington, northeast of the proposed survey area (RPS 2012a). This species was not sighted during the July 2012 L–DEO seismic survey off Oregon, southeast of the proposed survey area (RPS 2012c), or off Washington/Oregon during the June–July 2012 L–DEO Juan de Fuca plate seismic survey that included the proposed survey area (RPS 2012b). One northern elephant seal was sighted during the 2009 ETOMO survey north of the proposed survey area (Holst 2017).

TABLE 7—MARINE MAMMAL DENSITY VALUES IN THE PROPOSED SURVEY AREA

Species	Reported density (#/km^2) [a]
LF Cetaceans:	
Humpback whale	0.001829
Minke whale	0.0013
Sei whale	0.0004
Fin whale	0.004249
Blue whale	0.001096
MF Cetaceans:	
Sperm whale	0.002561
Cuvier's and Mesoplodont beaked whales	0.007304
Baird's beaked whale	0.00082
Bottlenose dolphin	0.000003
Striped dolphin	0.009329
Short-beaked common dolphin	0.124891
Pacific white-sided dolphin	0.017426
Northern right-whale dolphin	0.039962
Risso's dolphin	0.007008
False killer whale	N/A
Killer whale	[b] 0.00092
Short-finned pilot whale	0.00025
HF Cetaceans:	
Kogia spp	0.00163
Dall's porpoise	0.043951
Otariids:	
Northern fur seal	[b] 0.0103
Guadalupe fur seal	0.0029
Phocids:	
Northern elephant seal	0.0309

[a] Navy 2018.
[b] No stock-specific densities are available so densities are presumed equal for all stocks present.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 8), based on the areas predicted to be ensonified around the array and representative trackline distances traveled per day. This number is then multiplied by the number of survey days. The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total areas (km^2) expected to be ensonified to the Level A and Level B harassment thresholds.

TABLE 8—AREAS (KM^2) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS, PER DAY

Survey	Criteria	Relevant isopleth (m)	Daily ensonified area (km^2)	Total survey days	25% increase	Total ensonified area (km^2)
2–D Survey	Level B Harassment					

TABLE 8—AREAS (KM²) ESTIMATED TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS, PER DAY—Continued

Survey	Criteria	Relevant isopleth (m)	Daily ensonified area (km²)	Total survey days	25% increase	Total ensonified area (km²)
	160-dB	6,733	1,346.90	3	1.25	5,050.86
	Level A Harassment					
	LF Cetaceans	426.9	158.67	3	1.25	595.01
	HF Cetaceans	268.3	99.77	3	1.25	374.12
	Phocids	43.7	16.26	3	1.25	60.96
	MF Cetaceans	13.6	5.06	3	1.25	18.97
	Otariids	10.6	3.94	3	1.25	14.79
3–D Survey	Level B Harassment					
	160-dB	3,758	690.52	16	1.25	13,810.40
	Level A Harassment					
	LF Cetaceans	118.7	47.39	16	1.25	947.74
	HF Cetaceans	75.6	30.13	16	1.25	602.59
	Phocids	25.1	9.98	16	1.25	199.59
	MF Cetaceans	11.2	4.45	16	1.25	89.01
	Otariids	9.9	3.93	16	1.25	78.67

The marine mammals predicted to occur within these respective areas, based on estimated densities, are assumed to be incidentally taken. For species where take by Level A harassment has been requested, the calculated Level A takes have been subtracted from the total exposures within the Level B harassment zone. Estimated exposures for the proposed survey are shown in Table 9.

TABLE 9—ESTIMATED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED

Species	Stock	Level B	Level A	Total take	Percent of stock
LF Cetaceans					
Humpback whale	California/Oregon/Washington	32	3	35	1.21
Minke whale	California/Oregon/Washington	23	2	25	3.93
Sei whale	Eastern North Pacific	7	1	8	1.54
Fin whale	California/Oregon/Washington	74	7	81	0.90
Blue whale	Eastern North Pacific	19	2	21	1.28
MF Cetaceans					
Sperm whale	California/Oregon/Washington	48	0	48	2.40
Cuvier's and Mesoplodont beaked whales.	California/Oregon/Washington	138	0	138	[a] 2.18
Baird's beaked whale	California/Oregon/Washington	15	0	15	0.56
Bottlenose dolphin	California/Oregon/Washington	[b] 13	0	[b] 13	0.68
Striped dolphin	California/Oregon/Washington	176	0	176	0.60
Short-beaked common dolphin	California/Oregon/Washington	2,356	0	2,356	0.24
Pacific white-sided dolphin	California/Oregon/Washington	329	0	329	1.23
Northern right-whale dolphin	California/Oregon/Washington	754	0	749	2.82
Risso's dolphin	California/Oregon/Washington	132	0	132	2.08
False killer whale	Hawaii Pelagic	[b] 5	0	[b] 5	0.32
Killer whale	Offshore	17	0	17	[c] 5.67
	West Coast Transient				[c] 7.00
Short-finned pilot whale	California/Oregon/Washington	[b] 18	0	[b] 18	2.15
HF Cetaceans					
Kogia spp	California/Oregon/Washington	31	2	29	0.71
Dall's porpoise	California/Oregon/Washington	829	43	786	3.05
Otariids					
Northern fur seal	Eastern Pacific	194	0	194	[c] 0.03
	California				[c] 1.38

TABLE 9—ESTIMATED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED—Continued

Species	Stock	Level B	Level A	Total take	Percent of stock
Guadalupe fur seal	Mexico	55	0	55	0.28
Phocids					
Northern elephant seal	California Breeding	583	0	583	0.33

[a] Combined stock abundances for Cuvier's beaked whales and Mesoplodont guild.
[b] Calculated take increased to mean group size (Barlow 2016).
[c] Where multiple stocks are affected, for the purposes of calculating the percentage of stock affected, takes are analyzed as if all takes occurred within each stock.

It should be noted that the proposed take numbers shown in Table 9 are expected to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the number of takes by Level A harassment. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

Note that due to the different density estimates used, and in consideration of the near-field soundscape of the airgun array, we propose to authorize a different number of incidental takes than the number of incidental takes requested by L–DEO (see Table 6 in the IHA application).

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

L–DEO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of proposed mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, L–DEO has proposed to implement mitigation measures for marine mammals. Mitigation measures that would be adopted during the proposed surveys include (1) Vessel-based visual mitigation monitoring; (2) Vessel-based passive acoustic monitoring; (3) Establishment of an exclusion zone; (4) Power down procedures; (5) Shutdown procedures; (6) Ramp-up procedures; and (7) Vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. The area to be scanned visually includes primarily the exclusion zone, but also the buffer zone. The buffer zone means an area beyond the exclusion zone to be monitored for the presence of marine mammals that may enter the exclusion zone. During pre-clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the exclusion zone in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–500 meter exclusion zone, out to a radius of 1,000 meters from the edges of the airgun array (500–1,000 meters). Visual monitoring of the exclusion zones and adjacent waters is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring close to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to naïve marine mammals that may be in the area during pre-clearance, and (2) during airgun use, aid in establishing and maintaining the exclusion zone by alerting the visual observer and crew of marine mammals

that are outside of, but may approach and enter, the exclusion zone.

L–DEO must use at least five dedicated, trained, NMFS-approved Protected Species Observers (PSOs). The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval.

At least one of the visual and two of the acoustic PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, during a deep penetration (*i.e.,* ''high energy'') seismic survey, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.

During survey operations (*e.g.,* any day on which use of the acoustic source is planned to occur, and whenever the acoustic source is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset) and 30 minutes prior to and during nighttime ramp-ups of the airgun array. Visual monitoring of the exclusion and buffer zones must begin no less than 30 minutes prior to ramp-up and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the exclusion and buffer zones. These zones shall be based upon the radial distance from the edges of the acoustic source (rather than being based on the center of the array or around the vessel itself). During use of the acoustic source (*i.e.,* anytime airguns are active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) shall be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source.

During use of the airgun (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the buffer zone (but outside the exclusion zone) should be communicated to the operator to prepare for the potential shutdown or powerdown of the acoustic source. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods, to the maximum extent practicable. Visual PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Passive Acoustic Monitoring

Acoustic monitoring means the use of trained personnel (sometimes referred to as passive acoustic monitoring (PAM) operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining an exclusion zone around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

Passive acoustic monitoring (PAM) would take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustical monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It would be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The *R/V Langseth* will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the acoustic source. Acoustic PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least one hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional two hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the applicable exclusion zone in the previous two hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active acoustic source, but without an operating PAM system, do not exceed a cumulative total of four hours in any 24-hour period.

Establishment of Exclusion and Buffer Zones

An exclusion zone (EZ) is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs would establish a minimum EZ with a 500 m radius for the 36 airgun array. The 500 m EZ would be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the

vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the acoustic source would be shut down.

The 500 m EZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of SEL_{cum} and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. Additionally, a 500 m EZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we believe that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions.

Pre-Clearance and Ramp-Up

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-clearance observation (30 minutes) is to ensure no protected species are observed within the buffer zone prior to the beginning of ramp-up. During pre-clearance is the only time observations of protected species in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn protected species of pending seismic operations and to allow sufficient time for those animals to leave the immediate vicinity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the acoustic source. All operators must adhere to the following pre-clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the exclusion and buffer zones for 30 minutes prior to the initiation of ramp-up (pre-clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable exclusion or buffer zone. If a marine mammal is observed within the applicable exclusion zone or the buffer zone during the 30 minute pre-clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and 30 minutes for all other species);
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;
- PSOs must monitor the exclusion and buffer zones during ramp-up, and ramp-up must cease and the source must be shut down upon observation of a marine mammal within the applicable exclusion zone. Once ramp-up has begun, observations of marine mammals within the buffer zone do not require shutdown or powerdown, but such observation shall be communicated to the operator to prepare for the potential shutdown or powerdown;
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Acoustic source activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;
- If the acoustic source is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than that described for shutdown and powerdown (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the applicable exclusion zone. For any longer shutdown, pre-clearance observation and ramp-up are required. For any shutdown at night or in periods of poor visibility (*e.g.,* BSS 4 or greater), ramp-up is required, but if the shutdown period was brief and constant observation was maintained, pre-clearance watch of 30 min is not required; and
- Testing of the acoustic source involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-clearance of 30 min.

Shutdown and Powerdown

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array while a powerdown requires immediate de-activation of all individual airgun elements of the array except the single 40-in^3 airgun. Any PSO on duty will have the authority to delay the start of survey operations or to call for shutdown or powerdown of the acoustic source if a marine mammal is detected within the applicable exclusion zone. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the acoustic source to ensure that shutdown and powerdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up and powerdown) and (1) a marine mammal appears within or enters the applicable exclusion zone and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable exclusion zone, the acoustic source will be shut down. When shutdown is called for by a PSO, the acoustic source will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the EZ. If the acoustic PSO cannot confirm presence within the EZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity would not resume until the marine mammal has cleared the 500 m EZ. The animal would be considered to have cleared the 500 m EZ if it is visually observed to have departed the 500 m

EZ, or it has not been seen within the 500 m EZ for 15 min in the case of small odontocetes and pinnipeds, or 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

The shutdown requirement can be waived for small dolphins in which case the acoustic source shall be powered down to the single 40-in ^{3} airgun if an individual is visually detected within the exclusion zone. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement would apply solely to specific genera of small dolphins—*Tursiops, Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella and Steno*—The acoustic source shall be powered down to 40-in ^{3} airgun if an individual belonging to these genera is visually detected within the 500 m exclusion zone.

Powerdown conditions shall be maintained until delphinids for which shutdown is waived are no longer observed within the 500 m exclusion zone, following which full-power operations may be resumed without ramp-up. Visual PSOs may elect to waive the powerdown requirement if delphinids for which shutdown is waived to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision.

We include this small delphinoid exception because power-down/shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the Langseth to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a power-down/shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Powerdown conditions shall be maintained until the marine mammal(s) of the above listed genera are no longer observed within the exclusion zone, following which full-power operations may be resumed without ramp-up. Additionally, visual PSOs may elect to waive the powerdown requirement if the small dolphin(s) appear to be voluntarily approaching the vessel for the purpose of interacting with the vessel or towed gear, and may use best professional judgment in making this decision. Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger exclusion zone). If PSOs observe any behaviors in a small delphinid for which shutdown is waived that indicate an adverse reaction, then powerdown will be initiated immediately.

Upon implementation of shutdown, the source may be reactivated after the marine mammal(s) has been observed exiting the applicable exclusion zone (*i.e.,* animal is not required to fully exit the buffer zone where applicable) or following 15 minutes for small odontocetes and 30 minutes for all other species with no further observation of the marine mammal(s).

Vessel Strike Avoidance

These measures apply to all vessels associated with the planned survey activity; however, we note that these requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply. These measures include the following:

1. Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should be exercised when an animal is observed. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (specific distances detailed below), to ensure the potential for strike is minimized. Visual observers monitoring the vessel strike avoidance zone can be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena and broadly to identify a marine mammal to broad taxonomic group (*i.e.,* as a large whale or other marine mammal);

2. Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of any marine mammal are observed near a vessel;

3. All vessels must maintain a minimum separation distance of 100 m from large whales (*i.e.,* sperm whales and all baleen whales);

4. All vessels must attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an exception made for those animals that approach the vessel; and

5. When marine mammals are sighted while a vessel is underway, the vessel should take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel should reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the

area. This recommendation does not apply to any vessel towing gear.

We have carefully evaluated the suite of mitigation measures described here and considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of the proposed measures, NMFS has preliminarily determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Vessel-Based Visual Monitoring

As described above, PSO observations would take place during daytime airgun operations and nighttime start ups (if applicable) of the airguns. During seismic operations, at least five visual PSOs would be based aboard the *Langseth.* Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 x 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality (*i.e.,* Fujinon or equivalent) solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel;
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals. PSOs must have the following requirements and qualifications:
- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- NMFS shall have one week to approve PSOs from the time that the necessary information is submitted, after which PSOs meeting the minimum requirements shall automatically be considered approved;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within one week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

For data collection purposes, PSOs shall use standardized data collection forms, whether hard copy or electronic. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the acoustic source and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the acoustic source. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:

• Vessel names (source vessel and other vessels associated with survey) and call signs;
• PSO names and affiliations;
• Dates of departures and returns to port with port name;
• Date and participants of PSO briefings;
• Dates and times (Greenwich Mean Time) of survey effort and times corresponding with PSO effort;
• Vessel location (latitude/longitude) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
• Vessel heading and speed at beginning and end of visual PSO duty shifts and upon any line change;
• Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
• Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (*e.g.,* vessel traffic, equipment malfunctions); and
• Survey activity information, such as acoustic source power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, etc.).

The following information should be recorded upon visual observation of any protected species:
• Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
• PSO who sighted the animal;
• Time of sighting;
• Vessel location at time of sighting;
• Water depth;
• Direction of vessel's travel (compass direction);
• Direction of animal's travel relative to the vessel;
• Pace of the animal;
• Estimated distance to the animal and its heading relative to vessel at initial sighting;
• Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
• Estimated number of animals (high/low/best);
• Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, etc.);
• Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
• Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
• Animal's closest point of approach (CPA) and/or closest distance from any element of the acoustic source;
• Platform activity at time of sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other); and
• Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action.

If a marine mammal is detected while using the PAM system, the following information should be recorded:
• An acoustic encounter identification number, and whether the detection was linked with a visual sighting;
• Date and time when first and last heard;
• Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and
• Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

Reporting

A report would be submitted to NMFS within 90 days after the end of the cruise. The report would describe the operations that were conducted and sightings of marine mammals near the operations. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report would also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations and including an estimate of those that were not detected, in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

L–DEO will be required to submit a draft comprehensive report to NMFS on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of protected species near the activities, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all protected species sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The report must summarize the information submitted in interim monthly reports as well as additional data collected as described above and the IHA. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in survey activities covered by the authorization discover an injured or dead marine mammal, the L–DEO shall report the incident to the Office of Protected Resources (OPR), NMFS and to the NMFS West Coast Regional Stranding Coordinator as soon as feasible. The report must include the following information:
• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
• Species identification (if known) or description of the animal(s) involved;
• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;
• If available, photographs or video footage of the animal(s); and
• General circumstances under which the animal was discovered.

Additional Information Requests—If NMFS determines that the circumstances of any marine mammal stranding found in the vicinity of the activity suggest investigation of the association with survey activities is warranted (example circumstances noted below), and an investigation into the stranding is being pursued, NMFS will submit a written request to the IHA-holder indicating that the following initial available information must be provided as soon as possible, but no later than 7 business days after the request for information.

• Status of all sound source use in the 48 hours preceding the estimated time of stranding and within 50 km of the discovery/notification of the stranding by NMFS; and
• If available, description of the behavior of any marine mammal(s) observed preceding (*i.e.,* within 48 hours and 50 km) and immediately after the discovery of the stranding.

Examples of circumstances that could trigger the additional information request include, but are not limited to, the following:

• Atypical nearshore milling events of live cetaceans;
• Mass strandings of cetaceans (two or more individuals, not including cow/calf pairs);
• Beaked whale strandings;
• Necropsies with findings of pathologies that are unusual for the species or area; or
• Stranded animals with findings consistent with blast trauma.

In the event that the investigation is still inconclusive, the investigation of the association of the survey activities is still warranted, and the investigation is still being pursued, NMFS may provide additional information requests, in writing, regarding the nature and location of survey operations prior to the time period above.

Vessel Strike—In the event of a ship strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO must shall report the incident to OPR, NMFS and to regional stranding coordinators as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Species identification (if known) or description of the animal(s) involved;
• Vessel's speed during and leading up to the incident;
• Vessel's course/heading and what operations were being conducted (if applicable);
• Status of all sound sources in use;
• Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
• Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
• Estimated size and length of animal that was struck;
• Description of the behavior of the marine mammal immediately preceding and following the strike;
• If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
• Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
• To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

NMFS has defined negligible impact 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 (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all species listed in Tables 7 and 9, given that NMFS expects the anticipated effects of the proposed geophysical survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's proposed survey, even in the absence of proposed mitigation. Thus the proposed authorization does not authorize any mortality. As discussed in the *Potential Effects* section, non-auditory physical effects, stranding, and vessel strike are not expected to occur.

We propose to authorize a limited number of instances of Level A harassment of seven species and Level B harassment of 26 marine mammal species. However, we believe that any PTS incurred in marine mammals as a result of the proposed activity would be in the form of only a small degree of PTS, not total deafness, and would be unlikely to affect the fitness of any individuals, because of the constant movement of both the *Langseth* and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short). Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Langseth's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that the majority of takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). The proposed geophysical survey occurs outside of the U.S. EEZ and outside of

any established Biologically Important Areas or critical habitat.

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project areas; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the relatively short duration (~19 days) and temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

The activity is expected to impact a small percentage of all marine mammal stocks that would be affected by L–DEO's proposed survey (less than seven percent of all species). Additionally, the acoustic ''footprint'' of the proposed survey would be small relative to the ranges of the marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the proposed survey area.

The proposed mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via power downs and/or shutdowns of the airgun array. Based on previous monitoring reports for substantially similar activities that have been previously authorized by NMFS, we expect that the proposed mitigation will be effective in preventing at least some extent of potential PTS in marine mammals that may otherwise occur in the absence of the proposed mitigation.

The ESA-listed marine mammal species under our jurisdiction that are likely to be taken by the proposed surveys include the endangered sei, fin, blue, sperm, and Central America DPS humpback whales, and the threatened Mexico DPS humpback whale and Guadalupe fur seal. We propose to authorize very small numbers of takes for these species relative to their population sizes. Given the low probability of fitness impacts to any individual, combined with the small portion of any of these stocks impacted, we do not expect population-level impacts to any of these species. The other marine mammal species that may be taken by harassment during the proposed survey are not listed as threatened or endangered under the ESA. With the exception of the northern fur seal, none of the non-listed marine mammals for which we propose to authorize take are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species and stocks due to L–DEO's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

No mortality is anticipated or authorized;

- The proposed activity is temporary and of relatively short duration (19 days);
- The anticipated impacts of the proposed activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel;
- The number of instances of PTS that may occur are expected to be very small in number. Instances of PTS that are incurred in marine mammals would be of a low level, due to constant movement of the vessel and of the marine mammals in the area, and the nature of the survey design (not concentrated in areas of high marine mammal concentration);
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the proposed survey to avoid exposure to sounds from the activity;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the proposed survey would be temporary and spatially limited; and
- The proposed mitigation measures, including visual and acoustic monitoring, power-downs, and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 9 provides the numbers of take by Level A and Level B harassment proposed for authorization, which are used herefor purposes of the small numbers analysis. The numbers of marine mammals that we propose for authorized take would be considered small relative to the relevant populations (less than seven percent for all species and stocks) for the species for which abundance estimates are available.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of sei whales, fin whales, blue whales, sperm whales, Central America DPS humpback whales, Mexico DPS humpback whales and Guadalupe fur seals which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Interagency Cooperation Division for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to L–DEO for conducting a marine geophysical survey in the northeast Pacific Ocean in summer of 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for L–DEO's proposed survey. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an expedited public comment period (15 days) when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the proposed Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 3, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–12010 Filed 6–7–19; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 80

Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2018–0775; FRL–9994–87–OAR]

RIN 2060–AU34

Modifications to Fuel Regulations To Provide Flexibility for E15; Modifications to RFS RIN Market Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is adopting a new statutory interpretation and making corresponding regulatory changes to allow gasoline blended with up to 15 percent ethanol to take advantage of the 1-pound per square inch (psi) Reid Vapor Pressure (RVP) waiver afforded under the Clean Air Act (CAA). In doing so, EPA is finalizing an interpretive rulemaking which defines gasoline blended with up to 15 percent ethanol as ''substantially similar'' to the fuel used to certify Tier 3 motor vehicles. Finally, EPA is making regulatory changes to modify certain elements of the Renewable Fuel Standard (RFS) compliance system, in order to improve functioning of the renewable identification number (RIN) market and prevent market manipulation.

DATES: Amendatory instructions 4–10 are effective July 10, 2019. Amendatory instructions 1–3 and 11–12 are effective June 5, 2019.

Operational dates: For operational purposes under the Clean Air Act, the amendments to 40 CFR part 80, subpart M and corresponding portions of the preamble are effective as of July 10, 2019, and the amendments to 40 CFR part 80, subparts B and N; corresponding portions of the preamble; and the interpretation of ''substantially similar'' in the appendix to this **Federal Register** document are effective as of May 30, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2018–0775. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material is not available on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: 734–214–4131; email address: *macallister.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Effective date. Section 553(d)(1) of the Administrative Procedure Act, 5 U.S.C. 553(d)(1), provides that final rules shall not become effective until 30 days after publication in the **Federal Register** ''except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction.'' The purpose of this provision is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *Fed. Commc'n Comm'n,* 78 F.3d 620, 630 (D.C. Cir. 1996); *see also United States* v. *Gavrilovic,* 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA is issuing this final rule under CAA sec. 307(d), which states ''The provisions of section 553 through 557 . . . of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' CAA sec. 307(d)(1). Thus, APA sec. 553(d) does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA sec. 553(d) in making a portion of this rule effective immediately. The regulatory amendments to 40 CFR part 80, subparts B and N, relieve a restriction on the sale of E15 during the period of May 1 through September 15, which the 40 CFR part 80 regulations define as the ''regulatory control period.'' This action will enable E15 to take advantage of the 1-pound per square inch Reid Vapor Pressure waiver that currently applies to E10 during the summer months. Accordingly, it is in keeping with the policy underlying the APA for the regulatory amendments to 40 CFR part 80, subparts B and N, to take effect immediately. In addition, APA sec. 553(d) contains an exception for interpretive rules; thus, it is consistent with the APA to make the interpretation of ''substantially similar'' in the appendix to this **Federal Register** notice effective immediately. Finally, this CAA sec. 307(d) rule is promulgated upon signature. For operational purposes under the CAA, EPA is making the amendments to 40 CFR part 80, subparts B and N; corresponding portions of the preamble; and the interpretation of ''substantially similar'' in the appendix to this **Federal Register** notice effective as of May 30, 2019, which is the date of signature.

Potentially affected entities. Entities potentially affected by this final rule include those involved with the production, importation, distribution, marketing, and retailing of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, and renewable diesel. Potentially affected categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially affected entities
Industry	324110	2911	Petroleum refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Gasoline service stations.
Industry	447190	5541	Marine service stations.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by

this action. Other types of entities not listed in the table could also be affected. To determine whether your entity will be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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I. Executive Summary

On October 11, 2018, the President directed [1] EPA to initiate a Clean Air Act (CAA or the Act) rulemaking to extend to gasoline blends containing 15 percent ethanol by volume, commonly referred to as E15, the 1-psi (pound per square inch) Reid Vapor Pressure (RVP) waiver that currently applies to E10 (gasoline containing up to 10 percent ethanol by volume) during the summer ozone control season. The President also directed EPA to consider four reforms to the Renewable Fuel Standard (RFS) compliance system: (1) Prohibiting entities other than obligated parties from purchasing separated Renewable Identification Numbers (RINs); (2) requiring public disclosure when RIN holdings held by an individual actor exceed specified limits; (3) limiting the length of time a non-obligated party can hold RINs; and (4) requiring the retirement of RINs for the purpose of compliance be made in real time.

A. Purpose of This Action

The objectives of this action are twofold. First, this rulemaking will take steps intended to create parity in the way the RVP of both E10 and E15 fuels is treated under EPA regulations. Second, this action finalizes reforms to RIN regulations intended to increase transparency and deter potential manipulative and anti-competitive behaviors in the RIN market.

Further, in promulgating this rule, EPA is seeking to take justified actions to remove barriers which unnecessarily limit the potential growth in biofuel consumption, much as it did in 1987 for the original 1-psi waiver as markets were evolving. As is also clear from the text of the Energy Independence and Security Act of 2007, and the associated 36 billion gallon mandate by 2022, that Congress intended to promote and accommodate expanded biofuel use and outlined greenhouse gas savings. While this rule alone is not expected to increase the availability of E15, it removes one barrier to such an outcome.

B. Summary of the Major Provisions of This Action

1. E15 Reid Vapor Pressure

We are modifying the volatility requirements for E15 during the summer season or the period of May 1 through September 15.[2] [3] The changed volatility provisions for these blends will allow E15 to receive the benefit of the

[1] See President Donald J. Trump Is Expanding Waivers for E15 and Increasing Transparency in the RIN Market: *https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-expanding-waivers-e15-increasing-transparency-rin-market.*

[2] For purposes of this preamble, E15 refers to gasoline-ethanol blended fuels that contain greater than 10 volume percent and no more than 15 volume percent ethanol content. Under EPA regulations at 40 CFR part 80, we broadly define gasoline as ''any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.'' We have also clearly stated that any fuel that is predominantly gasoline is considered gasoline for purposes complying with EPA's fuels regulations at 40 CFR parts 79 and 80 and relevant provisions under the CAA (see 79 FR 23557 (April 28, 2014) and 81 FR 80841–80843 (November 16, 2016)). Gasoline-ethanol blended fuels (referred to as ''gasoline-ethanol blends'' in this action) are fuels under the CAA and gasoline-ethanol blended fuels containing no more than 50 volume percent ethanol are defined as gasoline under EPA's regulations. This preamble sometimes refers to gasoline or to gasoline-ethanol blended fuels in terms of the ethanol content of the fuel (*e.g.,* ''E10'' or ''E15''). At other times, this preamble uses the term gasoline to be inclusive of all fuels that are predominantly composed of gasoline, which would include, but is not limited to, all gasoline-ethanol blended fuels containing no more than 50 volume percent ethanol.

[3] CAA sec. 211(h)(1) requires EPA to establish volatility requirements—that is, a restriction on Reid Vapor Pressure (RVP)—during the high ozone season. To implement these requirements, EPA defines ''high ozone season'' at 40 CFR 80.27 as the period from June 1 to September 15. The regulations at 40 CFR 80.27 also specify that all parties except for retailers must make and distribute gasoline meeting the RVP standards at 40 CFR 80.27 from May 1 through September 15 and calls this period the ''regulatory control period.'' The E15 partial waivers impose the 9.0 psi RVP limit on E15 from May 1 through September 15. See 75 FR 68094 (November 4, 2010) and 76 FR 4662 (January 26, 2011). In general practice by industry and for purposes of this preamble, the high ozone season and regulatory control period is referred to as the ''summer'' or ''summer season'' and gasoline produced to be used during the regulatory control period and high ozone season is called ''summer gasoline.'' EPA's regulations do not impose any volatility requirements on any type of blend of gasoline outside of the summer season.

provision at CAA sec. 211(h)(4), commonly referred to as ''the 1-psi waiver.'' The 1-psi waiver allows gasoline-ethanol blends to have a higher RVP [4] than would be allowed under CAA sec. 211(h)(1) and the corresponding volatility provisions, which prohibit the RVP of gasoline from exceeding 9.0 psi during the summer.[5] Under EPA's previous interpretation of CAA sec. 211(h)(4), and corresponding regulations, only blends of ethanol and gasoline containing at least 9 percent and no more than 10 percent ethanol by volume (E10) were granted the 1-psi waiver.

EPA is finalizing three steps to accomplish this change. First, we are adopting a new interpretation of CAA sec. 211(h)(4). Second, we are finalizing two approaches to address CAA sec. 211(f). In the first of these approaches, we find that E15 is ''substantially similar'' (sub sim) to Tier 3 E10 certification fuel for use in MY2001 and newer light-duty vehicles.[6] In the second of these approaches, we maintain our interpretation of CAA sec. 211(f), making it clear that the conditions on the CAA sec. 211(f)(4) waivers granted to E15 in 2010 and 2011 do not restrict the application of the 1-psi waiver to downstream oxygenate blenders in most circumstances. Third and finally, we are modifying our regulations to effect two changes: (1) Remove limitations in our regulations on the volatility of E15 promulgated in the E15 Misfueling Mitigation Rule (''MMR'') that were put in place in keeping with the prior interpretation of CAA sec. 211(h)(4); [7] and (2) modify the associated product transfer document (PTD) requirements also promulgated in the MMR.

As a result of this action, parties will be able to make, distribute, and sell E15 made with the same conventional blendstock for oxygenate blending (CBOB) [8] that is used to make E10 by oxygenate blenders during the summer.[9] E15 will be held to the same gasoline volatility standards that currently apply to E10, maintaining substantially the same level of emissions performance as E10 since E15 made from the same CBOB as is used to make E10 during the summer would have slightly lower RVP than E10 and would be expected to have similar emissions performance as discussed in Sections II.C and II.E.

2. RIN Market Reform

EPA takes claims of RIN market manipulation seriously. Though, as stated in the proposal and reaffirmed in this action, we have yet to see data-based evidence of such behavior, the potential for manipulation is a concern. Accordingly, we are finalizing two reforms to increase our market monitoring capabilities, bring more transparency to the RIN market, and discourage RIN holdings in excess of normal business practices. Specifically, we are finalizing the following RIN market reforms:

- Requiring public disclosure when RIN holdings held by an individual actor exceed specified limits.
- Requiring the reporting of additional price and affiliate data to EPA.

First, we are finalizing two RIN holding thresholds that will work in tandem to discourage potential accumulation of market power. These thresholds will apply to holdings of separated D6 RINs only.[10] If a non-obligated party's end-of-day separated D6 RIN holdings exceed three percent of the total implied conventional biofuel volume requirement, it has triggered the primary threshold. If an obligated party's end-of-day separated D6 RIN holdings exceed three percent of the total implied conventional biofuel volume requirement and exceed 130 percent of its individual implied conventional renewable volume obligation (RVO), it has triggered the secondary threshold. We are requiring that parties make calculations of daily RIN holdings and report new information in a quarterly report, including a yes/no certification statement about exceeding the threshold and a list of all RIN-holding corporate affiliates and all contractual affiliates. We will publish on our website the names of any parties that report exceeding the thresholds.

Second, we are finalizing additional reporting requirements that will enhance EPA's oversight capabilities of RIN market behavior. We are finalizing requirements for parties to follow certain conventions when reporting RIN prices to EPA and to report whether the RIN transaction was on the spot market or as a result of a term contract.

Third, we are confirming our intention to take non-regulatory steps after promulgation of this action to update business rules in EMTS to require that both parties in a RIN transaction enter the same RIN price and to employ a third-party market monitor to conduct analysis of the RIN market, including screening for potential anti-competitive behavior. We intend to incorporate new information reported to EPA as a result of this rulemaking into such RIN market analysis.

Finally, we are not taking final action on three of the reforms that were proposed. These reforms are related to RIN retirement frequency, limitations on the parties that can purchase a D6 RIN, and the duration parties can hold D6 RINs. We have decided to defer the decision on whether or not to finalize these three proposed reforms as we conduct more thorough analyses of the RIN market and of the manipulation concerns presented by some stakeholders, with help from a third party. If, after reviewing that data and

[4] RVP is a measure of the volatility of gasoline. Gasoline must have volatility in the proper range to prevent driveability, performance, and emissions problems. If the volatility is too low, the gasoline will not ignite properly; if the volatility is too high, the vehicle may experience vapor lock. Importantly for this rule, excessively high volatility also leads to increased evaporative emissions from the vehicle. Vehicle evaporative emission control systems are designed and certified on gasoline with a volatility of 9.0 psi RVP. Higher volatility gasoline may overwhelm the vehicle's evaporative control system, leading to a condition described as ''breakthrough'' of the cannister and mostly uncontrolled evaporative emissions. The regulations at 40 CFR part 86 defines evaporative emissions as ''hydrocarbons emitted into the atmosphere from a motor vehicle, other than exhaust and crankcase emissions.'' For purposes of this preamble, evaporative emissions are generally referring to volatile organic compounds (VOCs) present in gasoline that evaporate within the fuel system. This differs from tailpipe or exhaust emissions which are defined under the regulations at 40 CFR part 86 as ''substances emitted to the atmosphere from any opening downstream from the exhaust port of a motor vehicle engine.'' For purposes of this preamble, when we refer to exhaust emissions, we are generally referring to exhaust emissions that are controlled in motor vehicles under Title II of the Clean Air Act.

[5] In a few areas, specified at 40 CFR 80.27, the RVP standard is 7.8 psi. In these areas, after application of the 1-psi waiver, gasoline-ethanol blended fuels covered by the 1-psi waiver could have an RVP of up to 8.8 psi.

[6] EPA last issued an interpretative rulemaking for what it considers sub sim for gasoline in 2008. See 73 FR 22281 (April 25, 2008).

[7] See 76 FR 44406 (July 25, 2011).

[8] CBOB is the base gasoline typically made for blending with 10 percent ethanol in conventional gasoline areas of the country.

[9] As previously noted, EPA's regulations do not impose any volatility requirements on any type of blend of gasoline outside of the summer season. EPA does not have volatility limitations on gasoline outside of the summer season. Therefore, E15 can already be made from the same CBOB used to produce E10 outside of the summer season. The rest of the year (outside of the summer season) is commonly referred to as the ''winter season'' or ''winter.''

[10] RINs specify a ''D-code'' corresponding to the renewable fuel category applicable to the fuel, as determined by the feedstock used, fuel type produced and GHG emissions of the fuel, among other characteristics. There are five different D-Codes for RINs in the RFS program. D3 RINs are cellulosic biofuel RINs. D4 RINs are biomass-based diesel (including both biodiesel and renewable diesel) RINs. D5 RINs are advanced biofuel RINs. D6 RINs are conventional biofuel RINs (primarily corn ethanol). D7 RINs are cellulosic diesel RINs which meet the requirements for both cellulosic biofuel and biomass-based diesel.

conducting additional market analysis, we determine that it would be prudent to finalize one or more of these proposed reforms in the future, we will share the analysis that has led us to believe it could be appropriate and will allow time for parties to comment before we proceed with a final rule.

C. Severability

The actions we are taking with regard to Section II are made pursuant to our authority under CAA secs. 211(c), 211(f), and 211(h). The actions we are taking with regard to Section III are made pursuant to our authority under Clean Air Act sec. 211(o). We consider Section II and the regulatory provisions we are finalizing under 40 CFR part 80, subparts B and N, to be severable from Section III and the regulatory provisions we are finalizing under 40 CFR part 80, subpart M, as these are two separate actions, each of which operates independently from the other.

II. Application of the 1-psi Waiver to E15

In this action, we are finalizing changes to the volatility provisions for E15 during the summer season based on revised interpretations of CAA sec. 211(h)(4) and CAA sec. 211(f). The changed volatility provisions for E15 will apply the 1-psi waiver to E15 pursuant to CAA sec. 211(h)(4). This provision allows certain gasoline-ethanol blends to have a higher RVP than would otherwise be allowed under CAA sec. 211(h)(1) and the corresponding volatility regulations that prohibit the RVP of gasoline from exceeding 9.0 psi during the summer. Prior to this rulemaking, EPA's interpretation of the statute and the corresponding regulations only applied the 1-psi waiver to gasoline-ethanol blends containing at least 9 percent and no more than 10 volume percent ethanol. The interpretation in this action represents a change in EPA's prior interpretation and, as explained in more detail below, is appropriate in light of the increased presence of E15 in the gasoline marketplace. This interpretation is further supported by the fact that the conditions that led us to provide the original 1-psi waiver for E10 in 1990 are equally applicable to E15 today.

The volatility of E15 is also limited by CAA sec. 211(f). CAA sec. 211(f) prohibits the introduction into commerce of fuels and fuel additives unless they either: (1) Are substantially similar to fuels or fuel additives utilized in the certification of motor vehicles, or (2) receive a waiver from the sub sim requirement in accordance with CAA sec. 211(f)(4). EPA granted E15 CAA sec. 211(f)(4) waivers in 2010 and 2011, subject to certain conditions. Under the waiver conditions, the RVP limit for E15 is 9.0 psi from May 1 through September 15. In order to effectuate the 1-psi waiver under CAA sec. 211(h)(4) and permit the introduction of E15 at the higher RVP level into commerce, we are addressing the statutory provisions under both CAA sec. 211(f) and (h).

As discussed in Section I, we are taking this action in response to the Presidential Directive to provide E15 the 1-psi waiver. All actions we are taking under both CAA sec. 211(h) and CAA sec. 211(f)(1) are in furtherance of that goal. EPA is taking several steps to provide E15 the 1-psi waiver. First, we are finalizing our proposed interpretation of CAA sec. 211(h)(4). Under this new interpretation, gasoline-ethanol blends containing at least 10 percent ethanol that are either substantially similar under CAA sec. 211(f)(1) or that have been granted a waiver under CAA sec. 211(f)(4) would receive the 1-psi waiver, including E15.[11]

Second, we are finalizing an interpretative rulemaking that defines E15 with an RVP of 9.0 psi RVP in the summer as sub sim to the fuel utilized to certify Tier 3 vehicles when used in model year (MY) 2001 and newer light-duty motor vehicles, subject to certain criteria. After application of the CAA sec. 211(h)(4) 1-psi waiver, this new definition of sub sim will allow E15 to be introduced into commerce with an RVP of 10.0 psi during the summer. Additionally, we maintain our interpretation of CAA sec. 211(f), making it clear that the conditions on the CAA sec. 211(f)(4) waivers granted to E15 in 2010 and 2011 do not restrict the application of the 1-psi waiver to downstream oxygenate blenders in most circumstances.

Third, to effectuate our new interpretations under CAA sec. 211(h) and 211(f)(1), we are finalizing the following changes to EPA's fuels regulations: (1) Removing limitations on the volatility of E15 in our regulations, that were put in place to implement the prior interpretation of CAA sec. 211(h)(4); and (2) modifying the associated Product Transfer Document (''PTD'') requirements.[12]

The actions we are taking, including those pursuant to our authorities under CAA secs. 211(f) 211(h), are all taken to establish a single, unified program that allows the introduction into commerce of E15 at 10.0 psi RVP during the summer driving season. For example, the actions we are taking under CAA sec. 211(f) are directly related to our new interpretation of CAA sec. 211(h)(4), and in the absence of this new CAA sec. 211(h)(4) interpretation, we would not be taking these actions. Additionally, the restrictions adopted as part of the E15 sub sim determination under CAA sec. 211(f)(1) are necessary to prevent the use of E15 in vehicles, engines, and equipment other than MY2001 and newer light-duty vehicles, and absent those restrictions and the limited nature of the sub sim determination, we would not consider E15 to be sub sim to Tier 3 certification fuel. Finally, our amendments to 40 CFR part 80 subparts B and N are pursuant to our actions under CAA secs. 211(f) and (h)(4). In sum, all actions we are taking today constitute a single, cohesive effort, and as such we do not intend for any of these individual actions to be severable. In the event it is determined we lack authority to adopt any element of this program, EPA believes the other elements of the program cannot be justified in isolation.

The following subsections provide further details on these changes, as well as discussions on the potential effects of this action on emissions and the economy. First, we provide background on both the relevant statutory provisions and the history of gasoline-ethanol blends in the fuel marketplace. We then discuss our new interpretation of CAA sec. 211(h), under which the 1-psi waiver applies to blends up to E15. Third, we provide a discussion of our new definition of ''substantially similar'' under CAA sec. 211(f)(1) and its application to E15. Finally, we provide discussion of the potential economic and environmental impacts of this action.

A. Background

The discussion below provides general background explaining the CAA provisions that are relevant to this action, as well as a description of prior EPA actions taken under those

[11] While any gasoline-ethanol blend containing at least 10 percent ethanol would receive the 1-psi waiver, that does not mean that gasoline-ethanol blends higher than E15 can be introduced into commerce at 10.0 psi. As discussed further below, in order for these fuels to be introduced into commerce, they must be substantially similar to certification fuel or obtain a waiver from the substantially similar requirement. Therefore, once this action is finalized, only E10 and E15 may be introduced into commerce at 10.0 psi.

[12] We also find that our existing understanding of the statute that CAA sec. 211(f), generally, and any waiver conditions imposed under CAA sec. 211(f)(4) more specifically, only apply to fuel and fuel additive manufacturers and thus provide an additional basis for the regulatory changes we are making in this action.

provisions. It also provides background on the presence of ethanol in the fuels marketplace.

1. Summary of Statutory Framework

The Air Quality Act of 1967 and the CAA of 1970 established the basic framework for EPA's fuels regulations. CAA sec. 211(a) allows EPA to designate fuels and fuel additives for registration. CAA sec. 211(b) sets forth registration requirements for fuels and fuel additives and authorizes EPA to require health and environmental effects testing for the registration of fuels and fuel additives. CAA sec. 211(c) authorizes EPA to regulate or prohibit fuels or additives for use in motor (or nonroad) vehicles or engines if: (A) ''any fuel or fuel additive or any emission product of such fuel or fuel additive causes, or contributes, to air pollution . . . that may reasonably be anticipated to endanger the public health or welfare,'' or (B) ''if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system.'' CAA sec. 211(c) also provides that in order to place a control or prohibition on a fuel or fuel additive under clause (A), EPA must consider ''all relevant medical and scientific evidence available . . . including consideration of other technologically or economically feasible means of achieving emission standards.'' In order to place a control or prohibition on a fuel or fuel additive under clause (B), EPA must consider ''available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control'' and those that do not require the proposed control.

In the CAA Amendments of 1977, Congress established CAA sec. 211(f)(1), which prohibits manufacturers from first introducing into commerce any fuel or fuel additive for general use in light-duty vehicles that is not ''substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle.'' In a report accompanying the enactment of this provision in addition to 211(c), Congress explained that ''the intention of this [section] is to prevent the use of any new or recently introduced additive in those unleaded grades of gasoline . . . which may impair emission performance of vehicles.'' [13] The Senate Report also states that the sub sim provision was enacted in recognition that ''due to the delay associated with statutory procedural safeguards of [CAA sec. 211(c)]'' parties could introduce fuel with negative impacts on emission controls before a CAA sec. 211(c) action could be completed.[14]

If a fuel or fuel additive is not sub sim, a fuel or fuel additive manufacturer may obtain a waiver under CAA sec. 211(f)(4) [15] if the manufacturer can demonstrate that the new fuel or fuel additive ''will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine, or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards with respect to which it has been certified.'' Together, CAA sec. 211(f)(1) and (f)(4) prevent fuels and fuel additives from being introduced into commerce that would degrade the emission performance of the existing fleet and protect vehicle manufacturers from their vehicles consequently failing emission standards in use.

In the CAA Amendments of 1990, Congress added CAA sec. 211(f)(1)(B), which extends the prohibition from first introduction into commerce to ''any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year vehicle, or engine.'' [16]

Also, in the CAA Amendments of 1990, Congress added CAA sec. 211(h) to address the volatility of gasoline, which largely codified EPA's then-new RVP regulations.[17] Accordingly, entirely separate from CAA sec. 211(f), CAA sec. 211(h)(1) prohibits the sale of gasoline with an RVP in excess of 9.0 psi during the high ozone season (while allowing EPA to promulgate more stringent RVP requirements for nonattainment areas),[18] and CAA sec. 211(h)(4) provides a 1.0 psi RVP allowance for ''fuel blends containing gasoline and 10 percent'' ethanol.

Relevant to our discussion of CAA sec. 211(f)(1) are CAA sec. 206 and 213. These provisions provide EPA with authority to establish vehicle and engine certification procedures; CAA sec. 213 also provides EPA with authority to establish emissions standards. CAA sec. 206, ''Motor vehicle and motor vehicle engine compliance testing and certification,'' authorizes EPA to established methods and procedures for testing whether a motor vehicle or motor vehicle engine conforms with our motor vehicle emissions standards promulgated under CAA sec. 202. CAA sec. 213, enacted in the CAA Amendments of 1990, authorizes EPA to promulgate regulations containing emissions standards for nonroad engines and nonroad vehicles.

In the Energy Policy Act of 2005 (''EPAct'') Congress added sec. 211(o) to the CAA creating the Renewable Fuel Standard (RFS), and then in the Energy Independence and Security Act of 2007 (''EISA'') modified and greatly expanded the program. The RFS program places obligations on refiners and importers to expand the use of renewable fuels such as ethanol in the nation's fuel supply.

2. Background on Ethanol Use Over Time

Prompted by concerns about reliance on foreign sources of oil and a desire to support domestic agriculture, several corn-based ethanol plants were constructed in the 1970s. In 1978, after a CAA sec. 211(f)(4) waiver application was submitted for E10, E10 was granted a CAA sec. 211(f)(4) waiver by operation of law.[19] The CAA sec. 211(f)(4) waiver along with an excise tax exemption for gasoline containing ethanol resulted in the growth in the production of ethanol through the mid-1980s at the rate of about 100 million gallons per year. In the years following, ethanol use in gasoline continued to grow as a result of a combination of state and federal programs and policies, as well as

[13] See S. Rep. 95–127 (95th Congress, 1st Session) at 90–91. See also *Motor Vehicle Manufacturers Association of the U.S., Inc.* v. *EPA,* 768 F.2d 385, 390 n.7 (D.C. Cir. 1985).

[14] Id.

[15] Quoted above is the current formulation of CAA sec. 211(f)(4). When enacted in 1977, the waiver provision stated a waiver could be granted ''if [the administrator] determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or fuel additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 206.'' See CAA Amendments of 1977.

[16] See 75 FR 68094, 68145 (Nov. 4, 2010).

[17] See 54 FR 11868 (March 22, 1989) (Phase I) and 55 FR 23658 (June 11, 1990) (Phase II).

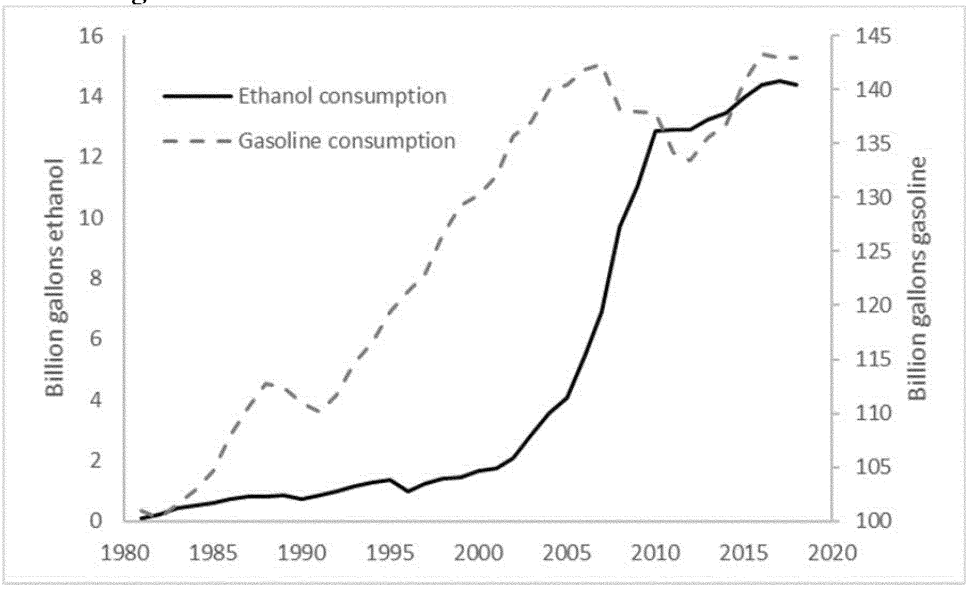
[18] A ''nonattainment area'' is an area designated as not meeting a National Ambient Air Quality Standard, or as contributing to another, nearby area's failure to meet such standard. See generally CAA sec. 107.

[19] See 44 FR 20777 (April 6, 1979). Under the CAA as it existed in 1978, unless EPA acted to deny a waiver application within 270 days, the waiver was deemed granted by operation of law. See 42 U.S.C. 7545(f)(4) (1978). In EISA, Congress revised this provision; under the statute as it now exists, EPA shall take final action to grant or deny an application after public notice and comment within 270 days of receipt, but does not automatically grant applications upon agency inaction.

favorable market conditions, until essentially all gasoline contained 10% ethanol by around 2013.

essentially all gasoline contained 10% ethanol by around 2013.

Figure II.A-1: Growth in the Use of Ethanol in Gasoline



In the 1980s, to make E10, or ''gasohol'' as it was known at the time, ethanol was ''splash blended'' into previously certified gasoline. ''Splash blending'' occurred when tanker trucks were filled up to 90 volume percent with gasoline at a gasoline terminal and then driven to an ethanol tank (at the gasoline terminal or at another location) to be filled with 10 volume percent ethanol. Mixing was assumed to take place as the truck drove to the retail station.[20] In 1987, when EPA first proposed the 1-psi RVP waiver for E10, just over 800 million gallons of ethanol was blended into gasoline. Assuming it was all blended at 10 percent, E10 represented just over 7 percent of the gasoline consumed in the U.S. This limited the impact of the 1-psi RVP waiver to a small portion of the fuel pool. Growth in ethanol use slowed between 1988 and 1990 as the volume of methyl tertiary butyl ether (MTBE) as a gasoline additive rose to provide octane and oxygen content to gasoline in lieu of ethanol.

In 1989, the first phase of the federal volatility standards went into effect.[21] Gasoline containing about 10% ethanol was simultaneously granted a 1-psi RVP waiver, such that continued use of E10 did not require the production and distribution of a special low-RVP gasoline blendstock for subsequent blending with ethanol. This allowed the practice of splash blending of ethanol to continue. At the time, gasohol also had a tax credit through which Congress intended to encourage the use of ethanol as a means of reducing dependence on foreign oil and making use of excess agricultural production.[22] Neither the Phase I (1989) nor the Phase II (1990 and thereafter) volatility standards appeared to have any direct impact on the magnitude of ethanol use. In 1991, we promulgated regulations in response to the CAA Amendments of 1990 that implemented the statutory 1-psi waiver. We again did not see significant impacts on ethanol use.

In 1992, the winter oxygenated fuels (''oxyfuels'') program for carbon monoxide (CO) nonattainment areas began as mandated by the CAA Amendments of 1990.[23] This program required the use of at least 2.7 percent by weight oxygen in gasoline, equivalent to about 15 volume percent MTBE or 7.8 volume percent ethanol in those areas.[24] The use of both ethanol and MTBE as gasoline additives grew over the next several years under the influence of the oxyfuels program, with ethanol reaching 1.3 billion gallons and E10 representing approximately 11 percent of all gasoline in 1994 (assuming all the ethanol was blended to make E10).

The reformulated gasoline (RFG) program, also enacted under the CAA Amendments of 1990, began in 1995 and applied to severe and extreme ozone nonattainment areas.[25] It required the use of at least 2.1 weight percent oxygen on average, equivalent to 11.6 volume percent MTBE or 6.0 volume percent ethanol.[26] Due to the summer volatile organic compounds (VOC) emissions standards for RFG, the 1-psi waiver for ethanol blends was effectively not applicable. This is because the gasoline-ethanol blends would not meet the summer VOC emission standards at the higher RVP. Thus ethanol blending into RFG required the production and distribution of a special low-RVP gasoline blendstock, referred to as reformulated blendstock for oxygenate blending (RBOB), into which ethanol could be blended at the terminal.[27] Perhaps due to this, and the relative ease of blending MTBE, ethanol's use in RFG was limited, and growth in the use of ethanol as a gasoline additive was more limited in the years after 1995 than it would have been if MTBE had not been available as an alternative to

[20] 52 FR 31292 (August 19, 1987).

[21] See 54 FR 11868 (March 22, 1989).

[22] Id.

[23] CAA sec. 211(m).

[24] Where allowed, ethanol was typically blended at 10 percent to take advantage of the 1-psi waiver, in both nonattainment and attainment areas.

[25] See, generally, CAA sec. 211(k).

[26] Again, ethanol was typically blended at 10 percent where allowed to take advantage of the 1-psi waiver.

[27] Because ethanol was high in octane, RBOB was also made to a lower octane specification in order to reduce costs.

ethanol. By the year 2000, ethanol use had grown to 1.7 billion gallons, with E10 representing about 13% of all gasoline (assuming all ethanol was blended to make E10). The practice of blending ethanol had also evolved from simple splash blending, to ethanol being metered into transport trucks at the 10% rate along with gasoline at the gasoline terminal; into RBOB in RFG areas; and into conventional gasoline (''CG'') in other areas.

Beginning in the early 2000s, concerns about leaking underground storage tanks and groundwater contamination led several states to ban the use of MTBE as a gasoline additive. The use of MTBE as a gasoline additive began falling in 2002, with its volume being replaced essentially 1:1 with ethanol in RFG areas. EPAct in 2005 removed the oxygenate mandate for RFG and replaced it with the Renewable Fuel Standard (RFS). By this time, refiners had already removed essentially all MTBE from RFG and replaced it with ethanol. This initially involved shifting much of the existing discretionary blending of ethanol in CG areas to RFG, until ethanol production and distribution capacity could increase to supply both the CG and RFG markets. By 2007, MTBE was rarely used, and coupled with the ongoing excise tax credit for ethanol, and the certainty of the Renewable Fuel Standard (RFS) mandate, ethanol's use rose significantly to 6.9 billion gallons by 2007, with E10 representing nearly half of all gasoline (assuming that all of the ethanol was blended to make E10).

In the following years, a combination of factors continued to create ongoing incentives for the rapid growth of E10, including rising crude oil prices, the expansion of the RFS program with the passage of EISA, and California's Low Carbon Fuel Standard (LCFS). With E10 comprising the majority of gasoline produced and distributed nationwide, refiners began producing not only low RVP/low octane RBOB for blending with ethanol in RFG areas at downstream terminals, but also a low octane conventional blendstock for oxygenate blending (CBOB) for blending CG with ethanol. By 2013, the pipeline distribution systems had switched over to transporting only CBOB for the production of conventional gasoline, forcing all refiners to harmonize around their production, and necessitating that 10 percent ethanol be added at downstream terminals in order for conventional gasoline to meet its octane and other specifications at retail. Essentially all gasoline, both reformulated and conventional, was E10 by this time, and total ethanol consumption was 13.2 billion gallons.

Similar to E10 in the 1970's, E15 has begun to slowly enter the marketplace. In October 2010, EPA partially approved a waiver request from Growth Energy allowing the introduction of E15 into commerce for use in model year 2007 and newer light-duty motor vehicles, subject to several conditions.[28] In January 2011, EPA extended this partial waiver to include model year 2001–2006 light-duty vehicles, allowing the use of E15 in model year 2001 and newer light-duty motor vehicles.[29] Since these partial waivers required E15 to meet a 9.0 psi RVP standard, in contrast to the 10.0 psi RVP standard E10 had to meet in the summer, introduction into commerce of E15 into CG areas required that CBOB for use to make E15 have a lower RVP than typically available.[30] This is similar to the situation faced by E10 in 1987. In the years since the E15 waivers were granted, the number of retail stations offering E15 has grown slowly, reaching 1,293 registered stations [31] (less than 1 percent of all retail stations) in May 2019.[32] Figure II.A–2 shows the growth of E15 stations since 2012.[33]

[28] 75 FR 68094 (November 4, 2010).

[29] 76 FR 4662 (January 26, 2011).

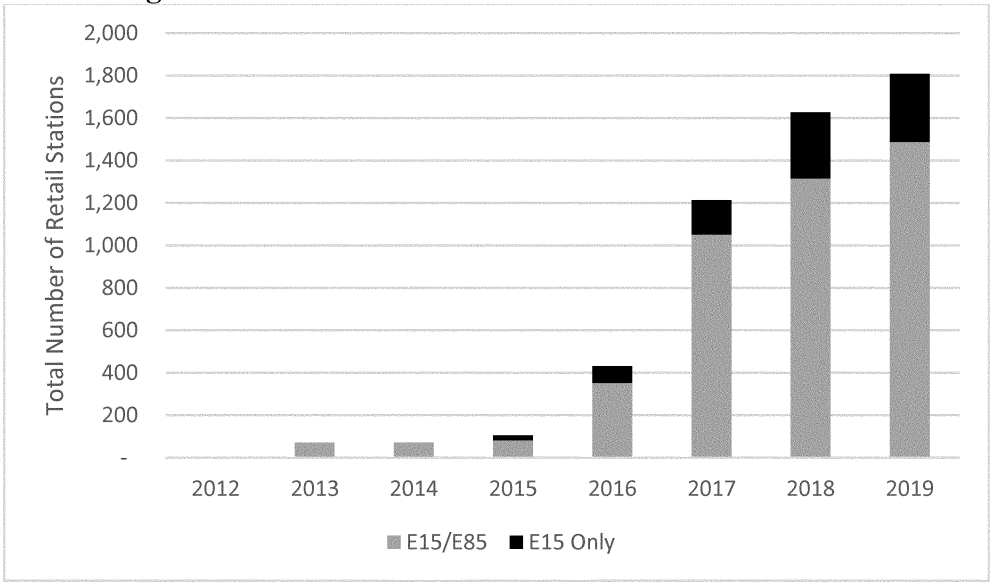
[30] Since RBOB was already sub-RVP, E15 could use the same RBOB already produced and distributed for E10 in RFG areas.

[31] The regulations at 40 CFR 80.1502 require that parties that produce E15 and ethanol for use in the production of E15 to participate in a survey of retail stations to ensure compliance with E15 misfueling mitigation requirements. As part of this process, these parties register with the RFG survey association, the independent surveyor that currently conducts the E15 survey. This registration with RFGSA includes information related to the number of E15 stations at which E15 is going to be sold. More information on RFGSA is available at: *http://rfgsa.org.* Growth Energy in comment also estimates this number at nearly 1,800 stations in 31 states. See Comments from Growth Energy, pg. 1. See also ''New Mexico Becomes 31st State to Add E15 Choice at the Pump,'' available at: *https://growthenergy.org/2019/05/01/growth-energy-new-mexico-becomes-31st-state-to-add-e15-choice-at-the-pump.*

[32] Much of this growth has been driven by USDA's Biofuel Infrastructure Program (BIP). In October 2015, USDA announced that the BIP was investing a total of $210 million, including money from USDA and matching commitments from states and private entities, to increase the number of retail stations offering E15 and other higher level gasoline-ethanol blends. These grants were intended to result in an additional 1,486 stations selling E15. In addition to BIP, Prime the Pump, a nonprofit organization supporting the expanded availability of E15, has provided funds to retail stations to add the necessary infrastructure to offer E15. This data demonstrates that a very high proportion of the stations currently offering E15 have received funding from federal, state, and/or industry sources. It also suggests that increasing the rate of growth of E15 stations in the future may require the availability of funds from such sources.

[33] See ''Data for Growth in E15 Retail Stations over Time from Growth Energy'' in the docket. EPA–HQ–OAR–2018–0775.

Figure II.A-2: Growth in E15 Retail Stations over Time



While there are no reliable statistics on the volume of E15 produced and distributed from these stations, it has remained small, with little overall impact on ethanol use. In coming years, if gasoline demand falls as projected by the U.S. Energy Information Administration (EIA),[34] growth in E15 would help offset a portion of the drop in ethanol use from declining E10 gasoline sales. The extension of the 1-psi RVP waiver to E15 in this action may help this, although there remain considerable other barriers as discussed in Section II.E, such that we do not project this action alone will meaningfully impact E15 sales in the coming years.

For reasons expanded upon in Section II.E (*e.g.,* consumer acceptance of E15 and demand for E10 in vehicles and engines not permitted to use E15), we believe marketers and retailers of gasoline will not be able to exclusively market E15 and will continue to offer E10 as the predominant fuel for the foreseeable future.

3. Background on CAA Sec. 211(h)

To properly understand this action, it is important to review the history of EPA's volatility controls both leading up to and after the enactment of CAA sec. 211(h). As mentioned above, Congress enacted CAA sec. 211(h) as part of the CAA Amendments of 1990 to address the volatility of gasoline. Congress did so in the context of EPA's prior regulatory actions, under CAA sec. 211(c), which aimed to control the RVP of gasoline. EPA has historically viewed Congress's enactment of 211(h), therefore, as a codification of EPA's regulatory actions regarding RVP up to that point.[35] Accordingly, CAA sec. 211(h)(1) prohibits the sale of gasoline with an RVP in excess of 9.0 psi [36] during the high ozone season while CAA sec. 211(h)(2) allows EPA to promulgate more stringent RVP requirements for nonattainment areas. CAA sec. 211(h)(4) provides a 1.0 psi RVP allowance for ''fuel blends containing gasoline and 10 percent'' ethanol and recognizes the existence of the 1979 CAA sec. 211(f)(4) waiver for E10—the only ethanol blend which had received such a waiver at that time—in the ''deemed to comply'' provisions contained in CAA sec. 211(h)(4)(A)–(C), which are discussed in more detail below.

a. Pre-Enactment Volatility Regulations

In 1987, prior to the CAA Amendments of 1990, EPA for the first time proposed limitations on the volatility of gasoline under CAA sec. 211(c), which provides EPA with general authority to regulate fuels and fuel additives. These limitations on gasoline volatility were proposed to address evaporative emissions from gasoline-fueled vehicles due to their contribution to ozone formation. The volatility of gasoline had begun rising significantly above the 9.0 psi RVP vehicle certification fuel level in the years preceding EPA's action, due to a strong economic incentive to add butane [37] to fuel due to favorable blending economics.[38] This led to very high evaporative VOC emissions from the in-use fleet of gasoline vehicles. EPA believed that matching the volatility of in-use gasoline to that of certification fuel would reduce evaporative emissions and would help ensure that the vehicles continued to have the same evaporative emissions levels in-use to the levels on which the vehicles were certified. In particular, limiting the volatility of gasoline to 9.0 psi RVP in the summer, which is the level in the indolene, a gasoline containing no ethanol, on which vehicles were certified under CAA sec. 206 at that time, would reduce emissions from all gasoline-related sources, enabling additional VOC emission reductions.[39]

At the time of the 1987 proposal, parties were primarily making E10 through ''splash blending,'' as described above. Adding 10 percent ethanol to gasoline, however, causes roughly a 1.0 psi RVP increase in the blend's volatility.[40] At the time, due to the limited amount of ethanol blended into gasoline, almost no low-RVP gasoline was available into which 10 percent ethanol could be splash-blended without the blended fuel exceeding the proposed RVP limit. Thus, even though the CAA sec. 211(f)(4) waiver allowed E10 to be lawfully introduced into

[34] See ''Updated market impacts of biofuels in 2019,'' Docket Item No. EPA–HQ–OAR–2018–0167–1330.

[35] See 76 FR 44433 (July 25, 2011).

[36] 9.0 psi RVP was and continues to be the level of RVP for gasoline certification fuel used to certify motor vehicles.

[37] Butane, in this context, refers to a high-volatility, relatively inexpensive gasoline blendstock that gasoline refiners typically add to or remove from gasoline to control RVP.

[38] 52 FR 31279 (August 19, 1987).

[39] See 52 FR 31274 at 31278–31287 (August 19, 1987).

[40] Id.

commerce, the lowered RVP standards had the potential to shut down the nascent ethanol blending industry.

To address this potential hurdle to continued ethanol blending, in the 1987 proposal, EPA included interim regulations for gasohol that allowed it to be 1.0 psi RVP higher than otherwise required for gasoline.[41] In describing our regulatory action to provide this flexibility, we refer to it as the 1-psi RVP allowance.[42] As a result, downstream blenders could add 10 percent ethanol into the gasoline that refineries had already produced without violating the proposed RVP regulations. The Agency, therefore, designed the 1-psi RVP allowance as a means to ensure that the effect of the CAA sec. 211(f)(4) waiver that was then applicable to E10 would not be nullified, as well as to address other public policy concerns, such as reducing dependence on foreign oil and making use of excess agricultural production, as referenced above. The Agency proposed that the 1-psi RVP allowance be conditioned on sampling and testing the final blend of gasoline and ethanol for RVP by all regulated parties, including downstream blenders, that elected to use the waiver.[43]

In 1989, EPA finalized regulations that imposed limits on the volatility of gasoline and ethanol blends as ''Phase I'' of a two-phase regulation under CAA sec. 211(c). EPA's regulation established a maximum RVP standard of 10.5 psi for gasoline during the high ozone season.[44] In that action, EPA also provided an RVP allowance ''for gasoline-ethanol blends commonly known as gasohol'' that was 1.0 psi higher than for gasoline.[45] This was finalized as an interim measure with the intent to revisit the issue in ''Phase II'' of the volatility regulations.[46]

EPA's final regulations in ''Phase I'' provided that in order to receive the 1-psi RVP allowance, ''gasoline must contain at least 9% ethanol (by volume),'' and that ''the ethanol content of gasoline shall be determined by use of one of the testing methodologies specified in Appendix F to this part.'' The regulations also provided that ''the maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under section 211(f)(4) of the Clean Air Act.'' [47]

In ''Phase I,'' EPA did not place limits on the upper bound of the ethanol content, other than by providing, as quoted above, that the ethanol content shall not exceed any applicable waiver conditions under CAA sec. 211(f)(4) (and thereby implicitly incorporating any upper-bound limit imposed as a condition on any future applicable waiver). At the time, the highest permissible ethanol content under a CAA sec. 211(f)(4) waiver was 10 percent ethanol, and thus, this provision could only apply to blends containing 9–10 percent ethanol. In other words, EPA designed the 1-psi RVP allowance to allow for the continued lawful introduction into commerce of E10 and the Phase I RVP regulatory language would have automatically accommodated future increases in allowable ethanol concentration in gasoline under a CAA sec. 211(f)(4) waiver.

In June 1990, in ''Phase II'' of the volatility regulations, EPA established a maximum RVP standard of 9.0 psi for gasoline during the high ozone season. The regulations also established an RVP standard of 7.8 psi for gasoline during the high ozone season in both ozone attainment and nonattainment areas in the southern states of the country. EPA further maintained the 1-psi RVP allowance for blends of 10 percent ethanol and gasoline and did not modify the regulations at 40 CFR 80.27(d).[48] Thus, both the language stating that the gasoline must contain at least 9 percent ethanol, and the language stating that the maximum ethanol content of gasoline shall not exceed any applicable waiver conditions under CAA sec. 211(f)(4), remained in the regulations, effectively allowing for automatic accommodation of the 1-psi RVP allowance for increases in allowable ethanol concentration in gasoline under future CAA sec. 211(f)(4) waivers.[49] In doing so, the Agency reiterated that these regulatory provisions are intended to accommodate the importance of ethanol to the nation's energy security as well as the agricultural economy sector. The Agency also addressed air quality impacts of allowing the 1-psi RVP allowance given that a higher RVP limit for blends of 10 percent ethanol and gasoline would result in increased evaporative VOC emissions in the small part of the gasoline market attributable at that time to blended. EPA explained that the 1 psi RVP allowance ''reflects the moderation in EPA's concern about negative air quality impact as well as a reluctance to threaten the motor fuel ethanol production and blending industries with collapse.'' [50]

b. Enactment of CAA Sec. 211(h)

In November 1990, Congress enacted the CAA Amendments of 1990, including CAA sec. 211(h), the first statutory provision specifically addressing the volatility of gasoline. CAA sec. 211(h)(1) required EPA ''to promulgate regulations making it unlawful . . . during the high ozone season to sell . . . or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch.'' Further in CAA sec. 211(h)(4), Congress, following EPA's lead in the 1989 and 1990 volatility regulations, also allowed fuel blends containing gasoline and 10 percent ethanol to have 1 psi higher RVP than the RVP standard otherwise established in CAA sec. 211(h)(1). This statutory provision is referred to as the 1-psi RVP waiver.[51] CAA sec. 211(h)(4) provides the following ethanol waiver: ''for fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under [CAA sec. 211(h)(1)].''

According to legislative history, ''[t]his provision was included in recognition that gasoline and ethanol are mixed after the refining process has been completed. It was recognized that to require ethanol to meet a nine pound RVP would require the creation of a production and distribution network for sub-nine pound RVP gasoline. The cost of producing and distributing this type of fuel would be prohibitive to the petroleum industry and would likely result in the termination of the availability of ethanol in the marketplace.'' [52] EPA has interpreted CAA sec. 211(h) as largely a codification of our prior RVP regulations and the 1-psi RVP allowance.[53]

Further, Congress enacted a conditional defense against liability for violations of the RVP level allowed

[41] See 52 FR 31274, 31316 (August 19, 1987).

[42] See 52 FR 31316 (August 19, 1987).

[43] See 52 FR 31274, proposed 40 CFR 80.27(d)(1) (August 19, 1987). See also 54 FR 11872–73 (March 22, 1989), where we declined to finalize this approach.

[44] See 54 FR 11879 (March 22, 1989).

[45] Id.

[46] Id.

[47] 54 FR 11872–73 (March 22, 1989) (codified at 40 CFR 80.27(d)).

[48] See 55 FR 23658, 23660 (June 11, 1990).

[49] Id.

[50] ''While some believe the industry should not exist . . . [o]ther agencies and Congress will continue to address related agricultural, trade and energy issues which have led to federal support for the existence of the gasohol industry.'' 55 FR 23666 (June 11, 1990).

[51] We also refer to the regulations at 40 CFR 80.27 as the ''1-psi RVP waiver'' as well.

[52] S. Rep. No. 101–228, at 110 (1989) (Conf. Rep.); reprinted at 5 Leg. Hist. at 8450 (1993).

[53] See 76 FR 44433 (July 25, 2011).

under the 1-psi waiver by providing that full compliance ''shall be deemed'' with a demonstration that (A) ''the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;'' (B) ''the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section;'' and (C) ''no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of this blend.'' (CAA sec. 211(h)(4)). This is referred to as the ''deemed to comply'' provision, or the alternative compliance mechanism for the 1-psi waiver. It is considered a statutorily mandated defense that allows regulated parties, such as downstream oxygenate blenders,[54] to demonstrate compliance with the RVP standard while taking advantage of the 1-psi waiver by meeting the specified conditions in CAA sec. 211(h)(4) in lieu of complying with the testing provisions in 40 CFR 80.27(d)(2) (1987). It also reflects Congressional response to EPA's proposed compliance testing provisions for the 1-psi RVP allowance in the 1987 proposed rulemaking, which Congress viewed as complicated and burdensome given the industry practices at the time used to produce gasohol: ''the enforcement strategy recently proposed by the Agency . . . would be totally unworkable for those motor vehicle fuels which are a blend of gasoline and ethanol and which are allowed a higher RVP limit under the reported bill.'' [55]

c. Implementation of CAA Sec. 211(h)(4)

Subsequent to Congress's enactment of CAA sec. 211(h)(4), EPA modified our volatility regulations to more explicitly align with the new statutory provisions, but ''did not propos[e] any change to the current requirement that the blend contain between 9 and 10 percent ethanol (by volume) to obtain the one psi allowance.'' [56] However, EPA did modify its regulations at 40 CFR 80.27 to clarify that ''gasoline must contain denatured, anhydrous ethanol,'' and that ''[t]he concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline'' (where, as quoted above, the previous version of the regulations provided that gasoline ''must contain at least 9% ethanol'' to qualify for the 1-psi RVP allowance and thus did not set an upper limit on ethanol content). At that time, we read both the statutory 1-psi waiver provision and the ''deemed to comply'' provision in CAA sec. 211(h)(4) together to limit the volume concentration of ethanol subject to the CAA sec. 211(h)(4) waiver to between 9 and 10 percent, as only blends of gasoline and up to 10 percent ethanol had a waiver under CAA sec. 211(f)(4) at the time EPA promulgated the RVP requirements.[57] We further stated that ''this is consistent with Congressional intent [because] the nature of the blending process . . . further complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol.'' [58] For these reasons, the 1-psi waiver reflected Congressional recognition of the existing CAA sec. 211(f)(4) waiver for E10; Congress intended that the 1-psi waiver from the 9.0 psi RVP requirement in CAA sec. 211(h)(1) would allow for E10's continued lawful introduction into commerce.[59]

In issuing implementing regulations at 40 CFR 80.28(g)(8) related to the ''deemed to comply'' provision in CAA sec. 211(h)(4), EPA allowed parties to demonstrate a defense against liability by making the showings provided in CAA sec. 211(h)(4), stating that ''EPA believes this defense is limited to ethanol blends which meet the minimum 9 percent requirement in the regulations and the maximum 10 percent requirement in the waivers under section 211(f)(4).'' [60]

4. Background of E10 and E15 CAA Sec. 211(f)(4) Waivers

CAA sec. 211(f)(1) makes it unlawful for ''any manufacturer of any fuel or fuel additive'' to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after MY1974, which is not substantially similar (commonly referred to as ''sub sim'') to any fuel or fuel additive used in the certification of any MY1975, or subsequent model year, vehicle or engine under CAA sec. 206. Fuels or fuel additives that are not sub sim to a fuel or fuel additive used in certification cannot be introduced into commerce unless EPA has granted a waiver under CAA sec. 211(f)(4). CAA sec. 211(f)(4) provides that upon application of any fuel or fuel additive manufacturer, the Administrator may waive the prohibitions of CAA sec. 211(f)(1) if the Administrator determines that the applicant has established that such fuel or fuel additive, or a specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine, or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to CAA sec. 206 and 213(a).

In 1978, a waiver application was submitted for gasoline containing ethanol at 10 percent by volume. EPA did not act to grant or deny the application for a waiver for E10, and consequently, under the statutory scheme as it existed at that time, the waiver was deemed granted by operation of law.[61] Thus, E10 was granted a waiver under CAA sec. 211(f)(4) without any conditions, in contrast to other CAA sec. 211(f)(4) waivers, which included, for example, conditions on fuel characteristics such as RVP.[62]

For E15, EPA granted partial waivers under CAA sec. 211(f)(4) in 2010 and 2011.[63] In March 2009, Growth Energy and 54 ethanol manufacturers submitted an application to EPA to grant a waiver under CAA sec. 211(f)(4) to allow E15 for use in all vehicles, engines, and equipment (''the E15 waiver request''). On October 13, 2010, EPA partially approved the E15 waiver request to allow the introduction of E15 into commerce for use in MY2007 and newer light-duty motor vehicles subject to certain waiver conditions.[64] Subsequently, on January 21, 2011, EPA extended this partial waiver to include MY2001–2006 light-duty motor vehicles after receiving and analyzing additional U.S. Department of Energy (''DOE'') test data and finding that E15 will not cause or contribute to a failure to achieve compliance with the emissions standards to which these vehicles were certified over their useful lives.[65] EPA also denied the waiver request for MY2000 and older light-duty motor

[54] ''Oxygenate blenders'' are defined in our regulations as ''any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility.'' An oxygenate blending facility is defined as ''any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives.'' See 40 CFR 80.2(mm) and (ll).

[55] S. Rep. No. 100–231, 100th Cong. 1st Sess. at 149 (1987).

[56] See 56 FR 64708 (December 12, 1991).

[57] Id.

[58] Id.

[59] Id.

[60] Id. and 40 CFR 80.28(g).

[61] See 44 FR 20777 (April 6, 1979).

[62] See, *e.g.,* ''Fuels and Fuel Additives; Waiver Application,'' Octamix Waiver, 53 FR 3636 (February 8, 1988).

[63] See 75 FR 68094 (November 4, 2010) and 76 FR 4662 (January 26, 2011), respectively.

[64] See 75 FR 68094 (November 4, 2010).

[65] See 76 FR 4662 (January 26, 2011).

vehicles, as well as all model year heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and nonroad engines, vehicles, and equipment. This denial was based on EPA's engineering analysis that E15 could adversely affect the emissions and emissions controls of vehicles, engines, and equipment not covered by the partial waivers and that the applicants had not provided sufficient data or other information to demonstrate that E15 would not cause or contribute to a failure to achieve compliance with the emissions standards to which these vehicles, engines, and equipment were certified over their full useful lives, as required by CAA sec. 211(f)(4).

In the October 2010 waiver, for MY2007 and newer motor vehicles, EPA also concluded that the data and information show that E15 will not lead to violations of evaporative emissions standards, so long as the fuel does not exceed an RVP of 9.0 psi in the summer.[66] EPA imposed a condition that allows fuel manufacturers to introduce E15 into commerce so long as the E15 does not have an RVP ''in excess of 9.0 psi during the time period from May 1 to September 15.'' [67] Subsequently, in the January 2011 waiver, EPA imposed identical waiver conditions for MY2001–2006 motor vehicles, including the requirement that the fuel not exceed an RVP of 9.0 psi in the summer, based on the same conclusion.[68]

Taken together, these partial waivers allow E15 to be used in MY2001 and newer light-duty motor vehicles subject to particular waiver conditions, including fuel quality conditions and conditions on the sale and use of E15. These waiver conditions include the prohibition on the use of E15 in pre-MY2001 motor vehicles, in addition to all model year heavy-duty gasoline engines or vehicles, or motorcycles, as well as any nonroad engines or nonroad vehicles. The waiver conditions also place limitations on the ethanol that can be added (both the concentration and quality),[69] as well as a condition that the RVP of the final fuel not exceed 9.0 psi.[70] The waiver conditions also require fuel and fuel additive manufacturers to submit to EPA a misfueling mitigation plan describing all reasonable precautions for ensuring E15 is only used in MY2001 and newer motor vehicles, as described in the waiver conditions.[71] To help facilitate the implementation of the waiver conditions and place requirements on parties other than fuel and fuel additive manufacturers, EPA promulgated the Misfueling Mitigation Rule in 2011, under CAA sec. 211(c), subsequent to the E15 partial waiver decisions.[72] The MMR imposed fuel dispenser labeling, PTD, and compliance survey requirements on parties that make and distribute E15. EPA promulgated the MMR ''to mitigate misfueling with E15 that lawfully has been introduced into commerce under the terms of the waiver[s]. The waiver conditions, and implementation of the waiver conditions, address a closely related but different issue—when, how and by whom E15 can be introduced into commerce under the partial waiver decisions. This rule only addresses the issue of mitigating misfueling in the event E15 is lawfully introduced into commerce under the partial waivers, and is issued under EPA's authority under section 211(c).'' [73] The MMR also applied EPA's prior interpretation of the 1-psi waiver in CAA sec. 211(h)(4) as not applying to E15 and adopted certain regulations designed to effectuate that interpretation.[74] In this action, EPA is interpreting CAA sec. 211(h)(4) and also amending the regulations to implement that interpretation.

B. Interpretation of CAA Sec. 211(h)(4)

In this action, we are finalizing our proposed change in interpretation of CAA sec. 211(h)(4). We find that the statutory language at CAA sec. 211(h)(4) is ambiguous. We last interpreted this section in 2011, and in this action we are changing our interpretation. Our new interpretation is consistent with the text of the provision, its context within CAA sec. 211(h), and Congressional intent. It is also reasonable in light of the changed circumstances since we last interpreted this provision in 2011, and in light of EPA's determination that it is appropriate to provide E15 the 1-psi waiver.

As discussed in Section II.A.2, gasoline-ethanol blends in the marketplace have increased such that the in-use gasoline supply is now almost entirely E10. E15 is now present in the marketplace, but the current limitation of the applicability of the 1-psi waiver to only E10 in most CG areas is one of several hurdles to the continued entry of E15 into the marketplace (discussed in more detail in Section II.E).[75] The same market limitation that prompted EPA to provide the 1-psi waiver for E10 nationwide in 1989 currently exists for E15 in most CG areas. Namely, in order for E15 to be distributed in most CG areas, it requires the production and distribution of a higher cost low-RVP CBOB into which 15 percent ethanol could be blended while still meeting the 9.0 psi RVP standard for gasoline during the high ozone season.[76] This is because E10 currently receives the benefit of the 1-psi waiver, but E15 does not. As a result, some parties for which other constraints (*e.g.,* compatible service station equipment) are not of concern might still not be able to produce and distribute E15, given the difficulty and cost associated with obtaining CBOB that when blended to produce E15 would meet the 9.0 psi RVP during the summer. With the 1-psi waiver, 15 percent ethanol could be blended using the same CBOBs currently being distributed for use with 10 percent ethanol, year-round.[77] This action, therefore, is a response to changed circumstances since the Agency's promulgation of RVP regulations in 1990, which pre-dates EPAct in 2005 and EISA in 2007, and since we last interpreted CAA sec. 211(h)(4) in 2011. Further, because blending 15 volume percent ethanol into gasoline would result in an approximate 1.0 psi RVP increase, similar to E10, the resultant RVP for any blended fuel would be no higher than the RVP standard plus the 1-psi waiver, which is currently 10.0 psi for a gasoline-ethanol blended fuel

[66] See 75 FR 68149–68150 (November 4, 2010).

[67] See 75 FR 68149 (November 4, 2010).

[68] See 76 FR 4682–4683 (January 26, 2011).

[69] For example, the ethanol used to make E15 must meet ASTM D4806–10 specifications for ethanol quality. See ASTM D4806–10, ''Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel,'' ASTM International, West Conshohocken, PA, 2010.

[70] See 75 FR 68094 (November 4, 2010) and 76 FR 4662 (January 26, 2011). This RVP limit is identical to the limitation under CAA sec. 211(h)(1) of 9.0 psi RVP during the high ozone season. The high ozone season was defined by the Administrator via regulation to mean the period from June 1 to September 15 of any calendar year.

[71] See 76 FR 4662, 4582 (January 26, 2011).

[72] See 76 FR 44406 (July 25, 2011).

[73] See 76 FR 44406, 44440 (July 25, 2011).

[74] As discussed further in Section II.B, in promulgating regulations following the enactment of CAA sec. 211(h)(4), EPA interpreted 211(h)(4) to apply to gasoline-ethanol blends containing between 9 and 10 percent ethanol. See 56 FR 64708 (December 12, 1991).

[75] See, *e.g.,* Prime the Pump: Driving Ethanol Gallons, available at: *https://growthenergy.org/wp-content/uploads/2019/01/MDEV-19022-PTP-Overview-2019–01-25.pdf.*

[76] Some parties have access to low RVP blendstocks created for low-RVP areas and RFG areas. However, these blendstocks are not widely distributed in all areas. For a list of state low-RVP areas, see EPA's ''State Fuels'' website available at: *https://www.epa.gov/gasoline-standards/state-fuels.*

[77] In reformulated gasoline areas (approximately one-third of gasoline nationwide) and certain other areas that do not provide a 1-psi waiver for E10, E15 can already be blended using the same blendstocks used for E10.

containing 10 percent ethanol.[78] This interpretation is consistent with the plain language of CAA sec. 211(h) and with Congress' intent to promote ethanol blending into gasoline, and is not expected to cause significant increases in emissions as compared to the current market situation with E10 as discussed in Section II.F.

In the MMR, we interpreted CAA sec. 211(h)(4) (which affords a 1-psi waiver to ''fuel blends containing gasoline and 10 percent denatured anhydrous ethanol'') as providing a 1-psi waiver for fuel blends of gasoline and at least 9 volume percent ethanol and not more than 10 volume percent ethanol despite having given E15 a partial CAA sec. 211(f)(4) waiver from sub sim. As previously explained, this interpretation was premised on a reading of regulations and statutory provisions that reflected the existence of a CAA sec. 211(f)(4) waiver for E10, which was the highest available ethanol content in the gasoline marketplace at the time of the 1990 Amendments to the CAA, and we did not alter this interpretation based on the existence of the E15 CAA sec. 211(f)(4) partial waivers. In that action, we read CAA secs. 211(h)(4), including the ''deemed to comply'' provision, and 211(h)(5) together to only apply the 1-psi waiver for E10. In this action, we are adopting a new interpretation of CAA sec. 211(h)(4), under which the provision specifies the minimum ethanol content that fuel blends containing ethanol and gasoline must contain in order to qualify for the 1-psi waiver. We are finalizing a new interpretation of this statutory provision that would allow the 1-psi waiver for gasoline containing at least 10 percent ethanol. This reading, which harmonizes all relevant provisions, removes the current, anomalous result whereby a sole ethanol blend (E10) receives the 1-psi waiver, when market conditions have changed over time such that E15 is an increased presence in the marketplace. Specifically, it would mean that the 1-psi waiver is equally applicable to gasoline-ethanol blends the agency finds are sub sim under CAA sec. 211(f)(1) and those gasoline-ethanol blends that receive or have received a CAA sec. 211(f)(4) waiver. At present, these are blends up to 15 percent ethanol, based on: (1) EPA's prior issuance of partial waivers in 2010 and 2011 under CAA sec. 211(f)(4) for E15; and (2) the finding in this rulemaking that E15 is sub sim to Tier 3 E10 certification fuel.[79]

Moreover, it is well settled that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as we provide a reasoned explanation. Many commenters pointed to EPA's previous interpretation of CAA sec. 211(h)(4) in the volatility regulations promulgated after the CAA Amendments of 1990, and the MMR as reasons why EPA's new interpretation is flawed. We do not find these arguments persuasive because of EPA's inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law. This authority exists in part because EPA's interpretations of the statutes we administer ''are not carved in stone.'' [80] An agency ''must consider varying interpretations and the wisdom of its policy on a continuing basis.'' [81] This is true when, as is the case here, review is undertaken ''in response to changed factual circumstances or a change in administration.'' [82] EPA must also be cognizant where we are changing a prior position that the revised position is permissible under the statute and must articulate a reasoned basis for the change.[83] In this case, EPA's interpretation of the text of CAA sec. 211(h)(4) is a reasonable one, and takes into account changed circumstances that have arisen since we issued the partial waivers for E15 in 2010 and 2011.

The Clean Air Act does not define the term ''containing'' in the phrase ''containing gasoline and 10 percent denatured anhydrous ethanol,'' and at proposal, therefore, EPA relied on the dictionary meaning that is reasonable, sensible and provides meaning to the reading of CAA sec. 211(h)(4). As explained in more detail below and in the response to comments (RTC) document accompanying this action, we are interpreting this term to establish a lower limit on the minimum ethanol content required for the 1-psi waiver in CAA sec. 211(h)(4). This interpretation applies to 211(h)(4) in its entirety, and 211(h)(5). Most of the commenters that argued for limiting the 1-psi waiver only selected their preferred meaning of ''containing'' without addressing whether that definition fit within the statutory scheme of CAA sec. 211(h)(4) or makes sense in this context and we have addressed these comments in Section 1.2.2.1 of the RTC document. Even when other potential meanings of the term are considered, EPA's interpretation and definition are eminently reasonable, make the most sense and provide meaning to the reading of CAA sec. 211(h)(4) in light of the current circumstances with respect to E15.[84]

As explained at proposal, Congress enacted CAA sec. 211(h)(4) when 10 percent ethanol was the highest permissible ethanol content in gasoline under the 1978 CAA sec. 211(f)(4) waiver that allowed for its introduction into commerce. At that time, there were no other CAA sec. 211(f)(4) waivers for gasoline-ethanol blends. As also explained at proposal, Congress promulgated the ''deemed to comply'' provision as an enforcement mechanism for the 1-psi waiver. Of relevance is the criterion that ''the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4).'' [85] In 2011, when EPA declined to extend the 1-psi waiver to E15, the agency's interpretation was premised largely on this additional criterion for the 1-psi waiver.[86] Nothing in these prior agency interpretations, however, sheds light on how to read ''containing,'' at the current time.

At proposal, we also explained that lack of modifiers in the phrase ''fuel blends containing gasoline and ten percent ethanol,'' supports our reading that Congress established a lower limit on the minimum ethanol content for the 1-psi waiver rather than an upper limit on the ethanol content. We then explained that Congress could legislate and would have likely employed terms connoting a maximum ethanol content limit in CAA sec. 211(h)(4) similar to, for example, CAA secs. 211(k) and (m) had Congress intended for the ethanol content to be an upper bound. CAA secs. 211(k) and (m) are mandatory gasoline content provisions that also employ specific units of measurement as an indication of measurement precision. CAA sec. 211(m)(2) provides that ''gasoline is to be blended to contain not less than 2.7 percent oxygen by weight.'' Section 211(k)(3)(A)(1)

[78] This is true for E15 made from blends of certified gasoline or BOB and ethanol. This volatility relationship is not maintained when other products (*e.g.,* natural gas liquids) are blended to make E15.

[79] See discussion at Section II.D.1, infra, for further discussion of the regulatory changes associated with this changed interpretation.

[80] *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863 (1984).

[81] Id. at 863–64.

[82] *Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 981 (2005). See also *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1043 (DC Cir., 2012) (change in administration is a ''perfectly reasonable basis'' for an agency's reappraisal of its regulations and programs).

[83] *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515.

[84] See *General Dynamics Land Systems* v. *Cline,* 540 U.S. 581, 596 (2004) (finding that ''age'' has several commonly understood meanings which should be interpreted in the context used).

[85] CAA sec. 211(h)(4)(B).

[86] See 76 FR 44406, 44433–35 (July 25, 2011).

provides that ''[t]he benzene content of reformulated gasoline shall not exceed 1.0 per cent by volume;'' section 211(k)(3)(A)(ii) provides that ''[t]he aromatics hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.'' We further noted that CAA sec. 211(h)(1) employs the modifier ''in excess'' as compared to CAA sec. 211(h)(4). But Congress notably did not use any modifier in CAA sec. 211(h)(4), which sets out a relaxation of a mandatory provision. It, therefore, appears that Congress made a deliberate choice—where Congress sought to impose mandatory fuel content requirements, such as in CAA secs. 211(k) and (m), it utilized modifiers as compared to where it set out an allowance or relaxation of a mandatory requirement such as CAA sec. 211(h)(4) for RVP, where it did not utilize modifiers. In other words, where Congress intended to impose a ''no greater than'' requirement addressing fuel properties, it explicitly did so. In contrast, in CAA sec. 211(h)(4), Congress included no such language.

Additionally, Congress employed modifiers where fuel content or properties were of a nature subject to precise determination, but as also shown elsewhere in this preamble, Congress promulgated the deemed to comply provision in response to measurement imprecision resulting from splash blending ethanol into gasoline. These provisions thus reflect a deliberate and intentional scheme and confirm our view that Congress legislates and the omission of modifiers in CAA sec. 211(h)(4) was also deliberate and intentional.

Given that this provision lacks modifiers for the term ''containing,'' in contrast to the other statutory provisions referenced above, there is support for our reading that this term as employed in the phrase ''fuel blends containing gasoline and ten percent ethanol'' is ambiguous and provides room for EPA to make interpretive and policy choices.

It is therefore permissible, and supported by the text of the statute, where Congress has used only the ambiguous term ''containing'' in CAA sec. 211(h)(4), for EPA to interpret ''containing'' to mean ''containing at least.'' Given this ambiguity, EPA's construct only needs to be a reasonable one and neither the best nor only reading of ''containing.'' (''Even if the statute does not compel EPA's reading, and indeed even if EPA's reading is not the better reading, the statute at a minimum is sufficiently ambiguous on this point to permit EPA's reading.'') [87] Where, as in this instance, EPA is confronted with a reading of a provision that was enacted at the time the highest permissible ethanol content under EPA's then-current regulations was E10, this connotation of ''containing'' as specifying a minimum limit or floor on the ethanol content for fuel blends to qualify for the 1-psi waiver in CAA sec. 211(h)(4) is a permissible reading that gives meaning to the phrase ''fuel blends containing gasoline and 10 percent denatured anhydrous ethanol.'' It is neither strained nor contrived but rather allows EPA as the agency tasked with administering the Clean Air Act to give effect and meaning to the terms of a relevant provision. (''The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.'') [88]

We are interpreting this language as establishing a lower limit, or floor, on the minimum ethanol content for a 1-psi waiver from the volatility requirements expressed in CAA sec. 211(h)(1), rather than an upper limit on the ethanol content. As explained at proposal, we can look to the use of the term ''containing'' in its ordinary sense, given the purpose and context of CAA sec. 211(h)(4) described above. ''Containing'' is defined as ''to have within: hold.'' [89] Under this interpretation, the statute sets the minimum ethanol content, such that all fuels which contain at least 10 percent ethanol may receive the 1-psi waiver, including blends that contain more than 10 percent ethanol.[90] Therefore, E15, which has within it 10 percent denatured anhydrous ethanol, meets this definition, and should receive the 1-psi waiver specified in CAA sec. 211(h)(4).[91]

When EPA issued implementing regulations under both CAA sec. 211(c) prior to the enactment of CAA sec. 211(h), and under CAA sec. 211(h), once that provision was enacted, those regulations reflected the highest permissible ethanol content at the time they were issued, which was 10 percent ethanol under a CAA sec. 211(f)(4) waiver. In describing the volatility regulations promulgated under CAA sec. 211(c), we stated that the 1-psi waiver is ''for blends of gasoline with about 10 percent ethanol, or gasohol.'' [92] In regulations, we codified the CAA sec. 211(f)(4) waiver, providing that ''[t]he maximum ethanol content . . . in gasoline shall not exceed any applicable waiver conditions under CAA sec. 211(f)(4) waiver.'' [93] Thus, EPA's actions merely reflected the situation at the time the regulations were promulgated. Additionally, prior EPA statements on the imprecise nature of gasoline-ethanol blending also support the view that neither Congress nor EPA intended to limit ethanol content for the 1-psi waiver. ''The nature of the blending process . . . complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol.'' [94]

The phrase ''fuel blends containing gasoline and ten percent ethanol'' is ambiguous, but as previously discussed, EPA as the agency tasked with implementing CAA sec. 211(h)(4) is interpreting this provision in a reasonable manner, which is consistent with the reading articulated in the House bill, *i.e.,* gasoline that contains at least 10 percent ethanol receives the 1-psi waiver.[95] EPA is not aware of any conference or committee reports, or

[87] *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014)

[88] *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 843 (1984).

[89] Webster's Third New International Dictionary 491 (unabridged ed. 1981). See also American Heritage Dictionary online 2019, defining ''containing'' as ''to have within; hold.''

[90] We are not changing our interpretation of the term 10 volume percent, which includes as little as 9 volume percent, to continue to provide the necessary blending flexibility for E10. Comments requesting that EPA revise its interpretation to exclude ethanol blends containing between 9 and 10 volume percent ethanol are outside the scope of this action, since EPA proposed only to interpret CAA sec. 211(h)(4) to apply to blends higher than 10 volume percent ethanol, and did not propose to revise its interpretation that blends containing 9 volume percent ethanol also receive the 1-psi waiver. Moreover, the text of CAA sec. 211(h)(4) encompasses E10, and, as explained in regulations implementing CAA sec. 211(h)(4), we stated that requiring exactly 10 volume percent ethanol ''would place a next to impossible burden on ethanol blenders,'' and that ''[t]he nature of the blending process itself . . . further complicates a requirement that the ethanol portion of the blend be exactly 10 percent ethanol.'' See 56 FR 24245 (May 29, 1991).

[91] CAA sec. 211(h)(5) also contains the language ''fuel blends containing gasoline and ten percent denatured anhydrous ethanol.'' Our changed interpretation of CAA sec. 211(h)(4) also has implications for CAA sec. 211(h)(5), which allows states to opt out of the 1-psi wavier provided by CAA sec. 211(h)(4) for particular areas upon a showing that the 1-psi waiver will increase emissions that contribute to air pollution. Because the language in CAA sec. 211(h)(5) pertaining to the 1-psi waiver is identical to the language in CAA sec. 211(h)(4), and both refer to the 1-psi waiver, we believe that both sections should be read together to apply the 1-psi waiver to E10 and E15. Accordingly, we interpret CAA sec. 211(h)(5) to allow states to opt out of the 1-psi waiver provided by CAA sec. 211(h)(4) for fuel blends containing gasoline and 9–15 percent denatured anhydrous ethanol.

[92] 55 FR 23660 (June 11, 1990).

[93] 55 FR 23660 (June 11, 1990) and 40 CFR 80.27(d)(2) (1987).

[94] 56 FR 24245 (May 29, 1991).

[95] See *Edison Electric Inst.* v. *EPA,* 2 F.3d 438, 451 (D.C. Cir. 1993) (holding that ''the deletion of a word or phrase in the throes of the legislative process does not ordinarily constitute, without more, evidence of a specific legislative intent.'').

other legislative history, explaining why Congress ultimately enacted the language in the CAA Amendments in lieu of the language in the House Bill and commenters have not provided any such explanation. There is no discussion, for example, of whether Congress felt that ''containing'' was sufficiently specific, or whether, as discussed above, the nature of the blending process was likely to make a requirement of ''at least'' ten percent difficult to meet in practice. Therefore, we do not find the failure to adopt the ''containing at least 10 percent'' language in the final bill persuasive as to whether Congress intended that meaning to be precluded under the statute.

Our interpretation is also supported by the purpose of the 1-psi waiver provision. The Senate Report published along with the enactment of the 1990 CAA Amendments and CAA sec. 211(h)(4) also describes both the purpose of including CAA sec. 211(h)(4), and general language about ethanol use in the fuel supply. The report states that the 1-psi waiver was:

> included in recognition that gasoline and ethanol are mixed after the refining process has been completed. It was recognized that to require ethanol to meet a 9 pound RVP would require the creation of a production and distribution network for sub-nine pound RVP gasoline. The cost of producing and distributing this type of fuel would be prohibitive to the petroleum industry and would likely result in the termination of the availability of ethanol in the marketplace. Under this provision, the RVP limitations promulgated pursuant to this subsection for such ethanol/gasoline blends shall be one pound per square inch greater than the applicable Reid vapor pressure which apply to gasoline. Senate Report 101–228, at 3495.

Finally, the Senate report states that the 1-psi waiver would ''allow ethanol blending to continue to be a viable alternative fuel, with its beneficial environmental, economic, agricultural, energy security and foreign policy implications.'' [96] Like E10 at the time of enactment, E15 currently requires the production and distribution of low-RVP blendstock and the cost of producing and distributing this type of blendstock has limited the availability of E15. While this legislative history does not speak to the meaning of the word ''containing,'' it does articulate congressional intent in enacting the provision, recognizing the role for ethanol in the marketplace. This report and other relevant legislative history do not explicitly address whether CAA sec. 211(h)(4) should apply to gasoline-ethanol blends that contain at least 10 percent ethanol and are sub sim under CAA sec. 211(f)(1) or have a waiver under CAA sec. 211(f)(4), but, as explained at proposal, the reasons it gives for extending the 1-psi waiver to gasoline-ethanol blends up to 10 percent ethanol would today similarly weigh in favor of interpreting the 1-psi waiver to apply to E15, given that Congressional action in CAA sec. 211(h) was largely a ratification of agency regulations for RVP (including the 1-psi waiver) that were initiated in 1987, under CAA sec. 211(c).

Our primary consideration has been to balance the goals of limiting gasoline volatility and ensure that the addition of ethanol does not cause the exceedance of the maximum RVP standard, while also promoting the use of ethanol consistent with the purpose of CAA sec. 211(h)(4). As previously explained, blending gasoline with at least 10 percent ethanol results in an approximate 1.0 psi RVP increase. It does not result in ''different volatility levels than already recognized by EPA as adding less than 1.0 psi RVP to gasoline.'' [97] Similarly, we also expect that E15 produced from the same BOB as E10 would have a similar (if not slightly lower) RVP than E10 and thus, would not exceed the current 10.0 psi RVP limit.[98] Therefore, we are confident that relative evaporative emissions effects for E15 would largely be similar or slightly less than those for E10, as discussed in Section II.F.

In sum, the primary consideration underlying the 1-psi waiver is to limit gasoline volatility while promoting the use of ethanol due to its importance to energy security and the agricultural sector. The interpretation in this action will continue to further these policy concerns given that agency action will now afford similar treatment to all gasoline-ethanol blends.

C. Interpretation of ''Substantially Similar'' for Gasoline

In this action, we are finalizing an interpretative rule which determines that E15 with an RVP of 9.0 psi is substantially similar to fuel used to certify Tier 3 light-duty vehicles (*i.e.,* E10 at 9.0 psi RVP) under CAA sec. 211(f)(1).[99] This new interpretation of sub sim would allow fuel manufacturers to introduce into commerce under CAA sec. 211(f)(1) E15 for use in MY2001 and newer light-duty motor vehicles because we find that E15 would have similar effects on the emissions (exhaust and evaporative), materials compatibility, and driveability when compared to Tier 3 E10 certification fuel when used in MY2001 and newer light-duty motor vehicles.[100] We are making this determination for E15 solely in order to provide E15 produced by fuel and fuel additive manufacturers the CAA sec. 211(h)(4) 1-psi waiver.

Additionally, we are not making this determination for E15 for use in MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles, and nonroad engines, vehicles, and equipment as we have determined that E15 is not ''substantially similar'' to Tier 3 E10 certification fuel when used in these vehicles, engines, and equipment.[101] Our technical justification for doing so is provided in Sections II.C.6–8.

This determination would make it lawful for any fuel or fuel additive manufacturer to make and introduce into commerce E15 at 10.0 psi RVP during the summer without the use of the E15 waivers under CAA sec. 211(f)(4). In conjunction with our interpretation of CAA sec. 211(h)(4) described in Section II.B, this would allow all parties the ability to lawfully introduce into commerce E15 at 10.0 psi RVP from May 1 through September 15 for use in MY2001 and newer light-duty vehicles, and is needed to effectuate the 1-psi waiver provided for E15 under our revised interpretation of CAA sec. 211(h)(4).[102]

[96] See S. Rep. No. 101–228 at 110 (December 20, 1989).

[97] Clean Air Act Amendments: Hearings on H.R. 2521, H.R. 3054 and H.R. 3196 Before the Subcommittee on Health and the House Committee on Environment and Committee On Energy and Commerce, 100th Cong. 1st Sess. (1987) (statement of Eric Vaughn, President and CEO of renewable Fuels Association).

[98] ''Determination of the Potential Property Ranges of Mid-Level Ethanol Blends.'' American Petroleum Institute, Washington, DC. April 2010.

[99] EPA does not have volatility standards on gasoline outside of the regulatory control period (May 1 through September 15), which includes the high ozone season (June 1 through September 15). For both the 2008 definition and the new definition, gasoline introduced into commerce outside of the regulatory control period is considered sub sim if it meets any gasoline volatility class in ASTM D4814. Tier 3 vehicles must be certified on fuels described at 40 CFR 1065.710(b). For purposes of this preamble, we refer to certification test fuel used in certification testing for Tier 3 motor vehicles that contains 10 volume percent ethanol as ''Tier 3 E10 certification fuel.'' Tier 3 E10 certification fuel has an RVP of approximately 9.0 psi.

[100] Auto manufacturers certified some light-duty motor vehicles using Tier 3 E10 certification fuel as early as MY2017 and almost all auto manufacturers must certify their light-duty motor vehicles using Tier 3 E10 certification fuel by MY2020.

[101] For purposes of this preamble, nonroad engines, vehicles, and equipment (including motorcycles and marine engines) are referred to as ''nonroad products.''

[102] Without the sub sim determination, only parties who are not fuel or fuel additive

Continued

Prohibitions on the use of E15 in all other on-road and non-road products that currently apply through regulations established under CAA sec. 211(c) remain in place, and parties that make and distribute E15, and ethanol for use in producing E15, would still need to satisfy the MMR requirements under 40 CFR part 80, subpart N. However, we are also including parameters within our definition of sub sim that fuel and fuel additive manufacturers take reasonable precautions to ensure that E15 is only used in vehicles, engines, and equipment for which E15 is sub sim to Tier 3 E10 certification fuel. This includes submission to EPA for approval of a misfueling mitigation plan as previously required under the partial waivers and discussed further in Section II.C.9.[103] This section outlines the background and rationale for our proposed interpretative rulemaking.

1. Certification Fuels

Historically, two fuels are utilized in EPA's emissions standards certification of gasoline-powered vehicles and engines: (1) Standardized gasoline with controlled parameters to ensure consistency across vehicle and engine certification used in emissions testing, and (2) commercially available mileage accumulation fuels used to ensure in-use durability of exhaust and evaporative emissions controls.[104] Historically, the fuel used in emissions testing (''certification test fuel'') contained no oxygenates (*e.g.,* ethanol) and was often referred to by its brand name, ''indolene.''

In the 2014 Tier 3 rulemaking, we updated the certification test fuel for Tier 3 certified motor vehicles and changed the certification test fuel from E0 to E10 to reflect the widespread use of E10 in the marketplace.[105] The requirement to use Tier 3 E10 certification fuel may have applied as early as MY2015 if a manufacturer elected to comply early with the Tier 3 vehicle emissions standards, but the requirement to use E10 in at least some vehicles began with MY2017. Almost all MY2020 and newer vehicles must be certified for emissions testing with Tier 3 E10 certification fuel, with some exceptions for small volume vehicle manufacturers, which must use Tier 3 E10 certification fuel by MY2022.

Service accumulation fuel for durability must be representative of commercially-available gasoline[106] and evaporative emissions durability must ''employ gasoline fuel for the entire mileage accumulation period that contains ethanol in, at least, the highest concentration permissible in gasoline under federal law and that is commercially available in any state in the United States.''[107] Since MY2004, service accumulation fuel used for evaporative system aging must contain the highest concentration of ethanol available in the market. After EPA partially granted the waivers for E15 in 2010 and 2011, we notified manufacturers in early 2012 that new evaporative emission families must be aged on E15 under 40 CFR 86.1824–08(f)(1).[108] We believe that auto manufacturers began evaporative system aging on E15 as early as MY2014.

2. History of ''Substantially Similar'' Interpretations

EPA has issued four interpretative rules that defined ''substantially similar'' for gasoline used in all gasoline-fueled vehicles. These interpretative rules describe the types of unleaded gasoline that are considered substantially similar to the unleaded gasoline utilized in our vehicle and engine certification programs, and place limits on a gasoline's chemical composition and physical properties, including the types and amount of alcohols and ethers (oxygenates) that may be added to gasoline. Fuels that are found to be substantially similar to certification fuels may be introduced into commerce. Each of our past interpretative rules provided an allowance for oxygenates within the gasoline. We last issued an interpretative rule on the phrase ''substantially similar'' for gasoline in 2008.[109] In that rulemaking, we allowed for the introduction into commerce of gasoline with modified testing procedures for introduction into commerce in Alaska. The current substantially similar interpretative rule for unleaded gasoline allows oxygen content up to 2.7 percent by weight for certain ethers and alcohols. Despite having changed certification test fuel to include 10 volume percent ethanol, prior to this proposed action, we have not addressed what should be considered substantially similar to Tier 3 E10 certification fuel utilized in Tier 3 light-duty vehicle certification.

In defining what fuels are sub sim to certification fuels, we have listed general physical and chemical characteristics, such as oxygen content, after determining that fuels and fuel additives meeting these general ''sub sim'' characteristics will not adversely affect emissions. In our past interpretations defining what physical and chemical characteristics are necessary to make a fuel or fuel additive ''sub sim'' to certification test fuel, we have taken three primary factors into account: (1) Emissions, (2) materials compatibility, and (3) driveability.[110] [111]

We initially specified that fuel with oxygen content up to 2.0 weight percent is sub sim to certification test fuel.[112] We later revised the definition to allow oxygen content up to 2.7 weight percent for gasoline containing aliphatic ethers and/or alcohols (excluding methanol), finding, based on data and our experience with CAA sec. 211(f)(4) waiver applications, that such levels would not result in emissions, materials compatibility, or drivability problems compared with certification test fuel.[113] Thus, we have a history of establishing maximum oxygen content as a criterion, in addition to other criteria, for determining whether a fuel or fuel additive is substantially similar to a fuel utilized in certification.

With respect to fuel volatility, our sub sim interpretations have specified that in order to qualify as sub sim to certification test fuel, which has

manufacturers as defined in 40 CFR 79.2, as discussed in the NPRM and in Section II.D.3, could introduce E15 into commerce at 10.0 psi in the summer.

[103] Companies that already have an approved misfueling mitigation plan under the E15 CAA sec. 211(f)(4) waivers will not need to submit for approval a separate plan under the sub sim interpretative rule in this action.

[104] See 46 FR 38582 (July 28, 1981).

[105] See 79 FR 23414 (April 28, 2014).

[106] See 40 CFR 86.113–15(a)(5).

[107] See 40 CFR 86.1824–08(f)(1).

[108] As described in 40 CFR 86.1803–01, an evaporative/refueling emissions family is ''the basic classification unit of a manufacturers' product line used for the purpose of evaporative and refueling emissions test fleet selection and determined in accordance with § 86.1821–01.'' This allows manufacturers of motor vehicles to group models that have similar evaporative emission control systems into a single family for purposes of certifying all models within the family to applicable evaporative emissions standards.

[109] See 73 FR 22281 (April 25, 2008).

[110] See 56 FR 5352 (February 11, 1991).

[111] For example, we have interpreted that only fuels and fuel additives with a chemical composition of carbon, hydrogen, oxygen, nitrogen, and sulfur (CHONS) are sub sim under 211(f)(1). Non-CHONS chemical compositions of fuels and fuel additives can impair emission controls resulting in increased emissions or ultimately failure of the emission controls, especially over time. We have also historically been concerned with higher levels of oxygen content as increased oxygen content in gasoline can result in enleanment of the air-fuel ratio leading to higher emissions as well as higher exhaust temperatures that can degrade emission controls over time, especially in vehicles and engines that lack adaptive fuel controls that adjust to oxygenate levels in fuels (*e.g.,* MY2000 and older light-duty motor vehicles).

[112] See 45 FR 6743 (October 10, 1980). 2.0 weight percent oxygen equates to approximately 5.7 volume percent ethanol.

[113] See 56 FR 5352 (February 11, 1991). 2.7 weight percent oxygen equates to approximately 7.7 volume percent ethanol.

historically had an RVP of 9.0 psi in light of the vehicle test conditions being reflective of summer conditions, fuels need only ''meet ASTM standards in general, that is, not necessarily for every geographic location and time of year.'' [114] To qualify as sub sim, gasoline (whether or not containing ethanol) ''must possess, at time of manufacture, all the physical and chemical characteristics of an unleaded gasoline as specified in ASTM D4814–88 for at least one of the Seasonal and Geographical Volatility Classes specified in the standard.'' [115]

3. Interpretation of CAA Sec. 211(f)(1)

In this action, we are putting forth a new interpretation of CAA sec. 211(f)(1). Recognizing the changed gasoline marketplace, and the multiple certification fuels used today, as compared to 1981, 1991, and even 2008, when the previous definitions of ''substantially similar'' were articulated, we are interpreting CAA sec. 211(f)(1) to find that E15 is substantially similar to Tier 3 E10 certification fuel for use in MY2001 and newer motor vehicles. This finding is consistent with the statutory text and purpose of CAA sec. 211(f)(1) and appropriate given the changed circumstances since our previous interpretations of what is ''substantially similar.'' [116]

Significant changes have occurred in the time period since CAA sec. 211(f)(1) was enacted and since we have had cause to interpret 211(f)(1) and to determine what fuels qualify as sub sim to our certification fuels. First, we partially granted a CAA sec. 211(f)(4) waiver that created a subset of gasoline fuel, E15 that can only be used in MY2001 and newer light-duty motor vehicles. We have information that the use of E15 in certain light-duty motor vehicles, as well as heavy-duty vehicles and nonroad vehicles, engines, and equipment, could cause or contribute to emission system failures.[117] Second, we have modified the certification fuel on which light-duty vehicles are certified from indolene (gasoline containing no ethanol) to Tier 3 E10 certification fuel for light-duty vehicles. We have not modified the certification fuel for other gasoline-powered vehicles, engines, and equipment. This action resulted in a split in the national vehicle and engine fleet by the certification fuel used to certify gasoline-powered vehicles, engines, and equipment: Tier 3 certified vehicles certified on Tier 3 E10 certification fuel and all other vehicles and engines certified on indolene. The use of Tier 3 E10 certification fuel also provides a new comparison point to determine which fuels would be considered substantially similar in all gasoline-powered vehicles, engines, and equipment. Additionally, E10, as discussed in Section II.A.2, has become the predominant fuel used in gasoline powered motor vehicles.

These two actions have resulted in a gasoline pool that is no longer interchangeable in all vehicles and engines. Unleaded gasoline, a fuel which we have interpreted CAA sec. 211(f)(1)(B) to apply, can be used in light-duty vehicles, as well as heavy-duty vehicles, and nonroad engines and equipment, including motorcycles and marine engines. However, as a result of the 211(f)(4) waivers for E15, we know that fueling a subset of those vehicles and engines with unleaded gasoline that is E15 will result in emissions exceedances. Since E15 has increased in availability in the gasoline marketplace as discussed in Section II.A.2 and may increase in the future, as discussed in Section II.E, it is important that E15 be introduced into commerce only for those vehicles for which it can be used without concerns over emissions, materials compatibility, or driveability.

We find that it would be inappropriate to allow the introduction into commerce of E15 for use in all gasoline-powered vehicles and engines in light of the demonstrated adverse impacts on emission systems due to the use of E15 MY2000 and older motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles, and nonroad engines, vehicles, and equipment. However, we do find that E15 is substantially similar to E10 when used in MY2001 and newer motor vehicles. Therefore, in this action, we are finalizing an interpretation of CAA sec. 211(f)(1) that accounts for the changed circumstances in both the fuel pool, the certification fuels, and vehicle fleet since we last interpreted this section.

As discussed in Section II.B, EPA has the ability to modify its interpretation of statutory provisions. We are doing so for our interpretation of CAA sec. 211(f)(1). Our past ''substantially similar'' interpretative rules have not attempted to limit the scope of the vehicles and engines for which fuels would be considered sub sim to our certification fuels. Rather, they put forth an interpretation regarding how EPA would determine whether a new fuel or fuel additive is ''substantially similar'' for general use in all gasoline powered engines, vehicles and equipment. When EPA took those previous actions, we had no information before us that indicated that use of those new fuels or fuel additives in certain subsets of vehicles or engines may be inappropriate. Therefore, there was no need for EPA to consider limitations or other criteria to modify the sub sim interpretation to a particular subset of vehicles or engines.

In previous determinations of CAA sec. 211(f), we looked broadly at the use of the new fuel or fuel additive in all gasoline-powered engines, vehicles, and equipment. This was appropriate at that time because all gasoline-powered engines, vehicles and equipment were certified using essentially the same fuel and were compatible with any gasoline. Now, in light of the CAA sec. 211(f)(4) waivers, and the changed certification fuel, E15 can be used in MY2001 and newer motor vehicles but its use in other gasoline powered products has demonstrated adverse effects on emissions and materials compatibility. The legislative history of the 1977 CAA Amendments makes clear that the purpose of CAA sec. 211(f) is to ensure that the introduction of new fuels and fuel additives into commerce does not adversely impact vehicle emissions.[118]

We retain certain aspects of previous interpretations. The first E15 sec. 211(f)(4) waiver decision, in 2010, was the last occasion on which we articulated our interpretation of CAA sec. 211(f), including the relationship between the CAA sec. 211(f)(1) provision and the CAA sec. 211(f)(4) waiver provision.[119] We stated that the CAA sec. 211(f)(1) ''prohibition has evolved over time,'' but ''the concept of applying this prohibition based on the relevant subset of vehicles continues.'' [120] For example, we explained that ''diesel fuel does not need to be substantially similar to the fuel used in the certification of gasoline vehicles, and E85 does not need to be substantially similar to fuel used in the

[114] See 46 FR 38585 (July 28, 1981).

[115] See 73 FR 22281 (April 25, 2008).

[116] In this action, we are putting forth a new definition of what is ''substantially similar'' to Tier 3 E10 certification fuel. We are also operating under a new interpretation of CAA sec. 211(f)(1) that requires the examination of the entire scope of vehicles and engines that could use E15, given that Tier 3 E10 certification fuel is only utilized in the certification of a subset of the vehicle and engine fleet. Our discussion of our changed interpretation of CAA sec. 211(f)(1) in this section applies both to our general interpretation of the meaning of CAA sec. 211(f)(1) and the scope of analysis and to our justification for a new substantially similar definition.

[117] See 76 FR 4662 (January 26, 2011).

[118] See S. Rep. 95–127, (95th Cong., 1st Sess.), at 90 (''The Administrator may waive the prohibition if the applicant establishes that the additive will not impair the emission performance of vehicles produced in model year 1975 and subsequent years.'').

[119] 75 FR 68145 (November 4, 2010).

[120] Id.

certification of diesel vehicles.'' [121] We also recognized that, in approving a fuel as substantially similar, EPA could consider narrow as well as broad subsets of motor vehicles when evaluating a fuel or fuel additive for introduction into commerce under CAA sec. 211(f)(1).

In assessing whether a fuel is substantially similar to a certification fuel, we must look only to its use in the engines and vehicles within which it can be used, and not its use in vehicles and engines which are fueled by other types of fuel. Consistent with our past interpretation, we again find that the use of the term ''any'' in the prohibition (''any . . . vehicle or engine'') does not mean all motor vehicles or 100 percent of the motor vehicle fleet.[122] This is supported by the plain meaning of the term ''any,'' which can mean ''one, some, or all indiscriminately of whatever quantity.'' [123]

As discussed further in Section 1.3.2.2 of the RTC, the use of the phrase ''any fuel utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine'' clearly encompasses fuels utilized in subsequent model years, such as Tier 3 E10 certification fuel. In particular the reference to a certification fuel for a ''subsequent model year'' permits our comparison of E15 to Tier 3 E10 certification fuel, a fuel utilized in the certification of MY2020 and later light-duty motor vehicles.

For this CAA sec. 211(f)(1) sub sim interpretation we are faced for the first time, however, with a situation where there are different gasolines used in the certification of different gasoline vehicles and equipment, and a different in-use gasoline (E15) that can only be used in a subset of in-use vehicles and engines. Because of this, the appropriate scope of review is all of the various vehicles and engines within which gasoline can be used, and our assessment under sub sim evaluates the appropriateness of fueling those vehicles and engines with various gasoline-ethanol blends. In this unique circumstance, we have the benefit of the CAA sec. 211(f)(4) waiver analyses that supported partial grants of CAA sec. 211(f)(4) waivers for E15 in 2010 and 2011. These data provide technical information useful to informing our sub sim analysis for E15. The use of data collected or analyzed in the context of a CAA sec. 211(f)(4) to inform a sub sim determination under CAA sec. 211(f)(1) is consistent with our prior practice. For example, in making the sub sim determination in our 1991 sub sim interpretive rule, we considered evidence that supported the CAA sec. 211(f)(4) waivers granted to methanol.[124] Based on the data in those waiver analyses, as well as additional data gathered in the eight years since that waiver, we have assessed whether E15 is sub sim to the Tier 3 E10 certification fuel for use in all of the vehicles and engines that could be exposed to fueling on E15 in-use.

In this action, we are also extending our assessment beyond those vehicles and engines certified under CAA sec. 206. We are again in a unique circumstance where due to our analysis under the CAA sec. 211(f)(4) waiver (which covers all motor vehicles, motor vehicle engines, nonroad engines, and nonroad vehicles), we have knowledge of the use of E15 in particular vehicles and engines causing or contributing to emission systems failures.[125] Because we have the benefit of this information, we find it appropriate to assess under 211(f)(1) whether E15 is sub sim to E10 when used in those vehicles and engines. Some of these vehicles and engines are certified under CAA sec. 213(a).[126] Therefore, we are also looking at whether E15 is sub sim to Tier 3 E10 certification fuel when used in nonroad products certified under CAA sec. 213(a).

In the proposal, we suggested that the comparison was relatively narrow—comparing the use of E15 to the use of Tier 3 E10 certification fuel in Tier 3 vehicles alone; *i.e.,* the fuel utilized in the certification of that vehicle or engine. We received many comments suggesting this is not an appropriate assessment under CAA sec. 211(f)(1) and we are not taking this approach in this action. Instead, we have concluded that it is appropriate to broaden our analysis to consider the use of E15 in all vehicles and engines that could be exposed to fueling on E15 in-use to determine whether E15 is substantially similar to Tier 3 E10 certification fuel.

Many commenters suggested that CAA sec. 211(f)(1) should be protective of all vehicles and engines in the fleet. We agree, and this action protects vehicles and engines by finding that the use of E15 in any MY2000 or older light-duty gasoline motor vehicle, any heavy-duty gasoline motor vehicle or engine, any highway or off-highway motorcycle, or any gasoline-powered nonroad engines, vehicles or equipment is not sub sim to Tier 3 E10 certification fuel. We also maintain the prohibition on use in these vehicles, engines and equipment implemented in the MMR.[127] These actions are being taken to protect the vehicles and engines for which use of E15 would be harmful.

In past sub sim interpretative rules, we have provided physical and chemical characteristics of fuels and fuel additives that would be considered sub sim to certification fuel. These interpretative rules broadly applied to a variety of fuel and fuel additives. Then, at registration, fuel and fuel additive manufacturers must demonstrate whether their fuel or fuel additive is sub sim or has a CAA sec. 211(f)(4) waiver from being sub sim.

In this interpretative rule we are taking both steps for E15 as compared to tier 3 E10 certification fuel—interpreting what is ''substantially similar'' to tier 3 E10 certification fuel, and providing a narrow definition for gasoline-ethanol blends containing greater than ten and less than 15 percent ethanol, and fuel additives utilized in that fuel that is sub sim to tier 3 E10 certification fuel and determining that E15, as a fuel, is sub sim. We are putting forth our determination that E15 meeting certain criteria is sub sim when used in MY2001 and newer light-duty vehicles.

4. Criteria for Determining Whether a Fuel Is ''Substantially Similar''

In this action, we are considering whether E15 is sub sim to Tier 3 E10 certification fuel when used in all motor vehicles and motor vehicle engines certified under CAA sec. 206 and nonroad products certified under CAA sec. 213(a).

As discussed in Section II.A.4, CAA sec. 211(f)(1) prohibits fuel and fuel additive manufacturers from introducing into commerce fuel or fuel additives that are not substantially similar to fuel or fuel additives utilized in the certification of motor vehicles. CAA sec. 211(f)(4) provides a waiver from this prohibition for fuels and fuel additives that can be established that such fuel or fuel additive, or a specified

[121] Id.

[122] Id.

[123] Webster's Third New International Dictionary (1976); see *Green* v. *Biddle,* 21 U.S. 1, 38 (1823) (''where the words of a law, treaty, or contract, have a plain and obvious meaning, all construction, in hostility with such meaning, is excluded'').

[124] 56 FR 5352, 5353 (February 11, 1991). We explained that ''although methanol is not included in the group of aliphatic alcohols and ethers covered by today's [sub sim interpretive rule] revision, the evidence in these fuel waiver dockets involving methanol supports the conclusion that unleaded gasolines containing aliphatic ethers and/or alcohols (excluding methanol), at up to 2.7 percent oxygen by weight, are substantially similar to unleaded gasoline used in light-duty vehicle emissions certification.'' Id.

[125] See 75 FR 68144 (November 4, 2010).

[126] CAA sec. 213(a)

[127] 40 CFR 80.1504(a)(1).

concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine, or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards to which it has been certified pursuant to CAA sec. 206 and 213(a).

To make this assessment, we have generally considered the effects of a fuel or fuel additive on emissions (exhaust and evaporative), materials compatibility, and driveability for motor vehicles and motor vehicle engines certified under CAA sec. 206.[128]

The criteria we consider when determining whether a fuel or fuel additive is sub sim to certification fuel under CAA sec. 211(f)(1) are similar to those criteria we consider when determining whether a new fuel or fuel additive should receive a waiver to CAA sec. 211(f)(1) under CAA sec. 211(f)(4). When determining whether a fuel or fuel additive is sub sim to certification fuel under CAA sec 211(f)(1), we have interpreted the criteria of emissions, materials compatibility, and driveability as necessary to ensure that any fuel or fuel additive determined to be sub sim will not impair the emission controls of vehicles, engines, and equipment, as intended by Congress. While the areas for consideration under CAA sec. 211(f)(1) and sec. 211(f)(4) are similar, the requirements in each provision differ. CAA sec. 211(f)(1) only requires that fuels be sub sim to certification fuel, while CAA sec. 211(f)(4) requires that the new fuel or fuel additive will not cause or contribute to any vehicles or engines exceeding their emissions standards over the fuel useful life of the vehicles or engines.

In practice, EPA has implemented CAA secs. 211(f)(1) and 211(f)(4) by evaluating similar criteria when defining which fuels are sub sim and when evaluating 211(f)(4) waiver requests (*i.e.,* emissions, materials compatibility, and driveability).[129] This is because these three areas speak both to whether a fuel or fuel additive is sub sim to certification fuel and whether such a fuel will damage a vehicle or engine's emission controls. We consider these criteria to be intrinsically linked as they are intended to answer the same question: Whether a fuels or fuel additive will harm emissions controls on vehicles and engines or result in increases in regulated emissions.

Furthermore, we believe that any new fuel or fuel additive that would cause or contribute to vehicles and engines exceeding emissions standards is, by definition, not substantially similar to certification fuel under sub sim. Given the intent of CAA sec. 211(f)(1) to protect emission controls, it would be inappropriate to define sub sim in a manner that included fuels or fuel additives that caused or contributed to vehicles exceeding their emissions standards. As a result, we have in the past interpreted sub sim conservatively to help ensure that this situation did not arise. We continue to believe that this is appropriate to ensure that CAA sec. 211(f)(1) protects the emission controls of vehicles and engines certified under CAA secs. 206 and 213. We also believe the converse is true for newer light-duty motor vehicles (*i.e.,* MY2001 and newer). In older vehicles, especially MY2000 and older motor vehicles, where certified emission standards were relatively less stringent than more modern standards (*i.e.,* National Low Emission Vehicle (NLEV), Tier 2, and Tier 3 vehicle emission standards), there was a substantial amount of headroom (*i.e.,* the amount between the actual level at which a vehicle is certified and the standard that the vehicle is subject to, typically around 50 percent of the standard,[130] which allowed for fuels or fuel additives to significantly increase emissions in absolute terms without causing vehicles to exceed emission standards. In modern vehicles, with more stringent emissions standards, it is almost impossible to have large, absolute increases in emissions and have a vehicle or engine meet its emissions standards. Even small absolute changes in emissions can cause vehicles to exceed emission standards. We believe that when a relative increase in the emissions profile of a new fuel or fuel additive compared to a certification fuel is sufficient to result in vehicles and engines exceeding certified emissions standards in use, the new fuel or fuel additive is not substantially similar to the certification fuel since there is very little room in standards for small absolute changes. Thus, while our analysis accompanying the E15 partial waivers considered whether E15 caused or contributed to vehicles and engines exceeding emissions standards over the full useful lives of the vehicles, we believe that the same analysis can inform our determination and in what circumstances E15 is sub sim to Tier 3 E10 certification fuel.

In order to determine whether E15 is sub sim to Tier 3 E10 certification fuel, we must consider the effects that E15 would have on all vehicles, engines, and equipment relative to Tier 3 E10 certification fuel. For each class of vehicles, engines, and equipment, we need to evaluate E15's relative effect on emissions, materials compatibility, and driveability. For the most part, we have already considered the effects of E15 on all vehicles, engines, and equipment certified under CAA secs. 206 and 213 in the E15 partial waivers and the MMR. In those actions, we evaluated the effect of E15 use on emissions (exhaust and evaporative), materials compatibility, and driveability over the full useful lives of MY2000 and older motor vehicles, MY2001 and newer light-duty motor vehicles, nonroad products (including motorcycles and marine engines), and heavy-duty gasoline-fueled vehicles. While the focus of the analysis for the E15 waiver decisions was on E15 relative to indolene (*i.e.,* E0) and this sub sim determination is on E15 relative to E10, we generally anticipate that there would be less differences when E15 is compared to E10 in the national vehicle and engine fleet. A summary of our finding for these classes of vehicles and engines is presented below, but the full discussion and all data and literature used to support our findings is contained in the E15 waivers and the MMR and are incorporated here by reference and included in the docket. Although we incorporate the discussion and all data and literature in support of the E15 partial waivers, we are not reopening those waivers with this action. We separately discuss in sections II.C.6–8 the following vehicles and classes:

- MY2000 and older motor vehicles
- MY2001 through 2019 light-duty motor vehicles
- MY2020 and newer light-duty motor vehicles (*i.e.,* Tier 3 vehicles)
- Vehicles, engines, and equipment prohibited from E15 use

Since Tier 3 certified vehicles did not exist at the time of the E15 waivers and the MMR, we consider those vehicles separately from the MY2001–2019 light-duty vehicles. As described in Section II.C.9, it is appropriate for us to restrict the applicability of this new definition of sub sim to only those vehicles, engines, and equipment for which we are determining that E15 is sub sim to Tier 3 certification fuel.

5. Impact of Volatility on ''Substantially Similar''

In determining whether a fuel is substantially similar, our analysis compares a fuel (in this case, E15) to a fuel utilized in the certification of motor vehicles (in this case, Tier 3 E10 certification fuel). Our certification fuel

[128] See, *e.g.,* 56 FR 5354 (February 11, 1991).

[129] See 75 FR 68144–68145 (November 4, 2010).

[130] See 75 FR 68111 (November 4, 2010).

regulations specify a volatility limit for Tier 3 E10 certification fuel of 9.0 psi.[131] In this action, we are also considering our sub sim interpretation, in the context of our interpretation of CAA sec. 211(h)(4) described above.

EPA proposed two alternative analyses for a sub sim interpretation for E15. The first analysis compared E15 at 10.0 psi—*i.e.,* after application of the CAA sec. 211(h)(4) waiver—to E10 certification fuel at 9.0 psi RVP. The second analysis compared E15 at 9.0 psi RVP to E10 certification fuel at 9.0 psi RVP. For the reasons explained below, we have adopted the latter interpretation in this final action—comparing E15 at 9.0 psi RVP to E10 certification fuel at 9.0 psi RVP. As stated in Section II.A.1, CAA sec. 211(f) exists to protect the emissions control systems of vehicles and engines and thus prevent the degradation of those systems. The emissions control systems of vehicles and engines have become increasingly sensitive to changes in volatility as emissions standards have become increasingly stringent over time. Therefore, changes in volatility can also affect the efficacy of evaporative emissions systems. It would be inappropriate to completely ignore the volatility of a fuel in evaluating whether it is sub sim, especially as volatility relates to evaporative emissions. We continue to believe that the volatility of fuel is important to consider when determining whether a fuel or fuel additive is substantially similar to fuel utilized in the certification of vehicles and engines under CAA sec. 211(f)(1). In particular, the volatility of fuels can have a significant impact on the evaporative emissions (as well as exhaust emissions) from a vehicle, one of the considerations EPA has analyzed under sub sim historically and in this action, as described in this section.

In the proposal, we suggested that it may be appropriate to utilize our previous approach to volatility in a sub sim determination. In previous sub sim interpretative rules and corresponding definitions, we have required gasoline to only meet the volatility requirement of a single volatility class defined in ASTM Standard D4814–88, which range from 7.0 psi to 15.0 psi over the course of the year. We viewed this as appropriate when considering fuels and fuel additives that themselves are not impacting the volatility of gasoline during the summer months. When volatility impacts do not impair evaporative emissions controls that are important to air quality, we only need to consider the volatility impacts of the fuel or fuel additive to ensure that the fuel still falls within the bounds of what is considered to be gasoline. Therefore, we do not find it would be appropriate to compare E15 at 10.0 psi to E10 at 9.0 psi.

In this action, we are providing a new interpretation of CAA sec. 211(h)(4) that applies the 1-psi waiver to ethanol blends greater than 10 but no more than 15 volume percent ethanol. There, Congress provided a 1-psi waiver for the blending of gasoline-ethanol blends in order to promote ethanol blending in gasoline and ensure that those gasoline-ethanol blends could remain in use. CAA sec. 211(h)(4) does not provide any additional analysis or consideration for EPA prior to the application of the 1-psi waiver, nor does it provide guidance to EPA on the operability of the statutory provisions. E15 will be treated similarly to E10 under CAA secs. 211(f)(1) and 211(h)(4); blendstocks produced by fuel and fuel additive manufacturers typically meet a lower-RVP standard, and then, upon addition of ethanol by downstream parties, the blended fuel is given an RVP allowance, allowing up to 1.0 psi higher RVP. The approach we are taking gives meaning to both 211(f)(1) and its consideration of volatility in determining whether a fuel is sub sim, and 211(h)(4) which provides the 1-psi waiver. Therefore, the 1-psi waiver operates after other limitations on the introduction of E15 into commerce.

Therefore, the analysis under CAA sec. 211(f) is limited in scope in this particular situation. We need not address the 1-psi waiver that is expressly provided in another provision of CAA sec. 211 by analyzing emission impacts at the volatility level provided through the waiver in order to determine whether a fuel is substantially similar to a certification fuel. In this case, we need not look at the emissions impacts of E15 at 10.0 psi RVP because CAA sec. 211(h)(4), as interpreted in this action, will itself allow for the 1-psi waiver for E15. It is not the case that volatility is wholly irrelevant to our evaluation of what is sub sim, given that the level of RVP for gasoline certification fuel used to certify motor vehicles is 9.0 psi, but rather in this case, we find it would be inappropriate to limit under sub sim the volatility of a fuel that Congress allowed a 1-psi waiver from the volatility standard, under CAA sec. 211(h)(4). Our determination under sec. 211(f)(1) only allows E15 to be introduced into commerce without a CAA sec. 211(f)(4) waiver.[132] It is the operation of CAA sec. 211(h)(4) that allows E15 to receive the 1-psi waiver, resulting in E15 having to meet a 10.0 psi RVP limit, rather than a 9.0 psi RVP limit.

It follows that our point of comparison is E15 at 9.0 psi to Tier 3 E10 certification fuel (*i.e.,* E10 at 9.0 psi). Additionally, our finding in this action that E15 is substantially similar to Tier 3 E10 certification fuel when used in MY2001 and newer light-duty motor vehicles is limited to E15 at 9.0 psi. In considering whether E15 is sub sim to tier 3 E10 certification fuel in the areas of materials compatibility, emissions, and driveability, we have done so comparing E15 at 9.0 psi to Tier 3 E10 certification fuel at 9.0 psi. This approach recognizes the importance of volatility on evaporative emissions, one of the criteria we have historically considered in evaluating whether a fuel is sub sim.

6. Technical Rationale and Discussion for Tier 3 Vehicles (MY2020 and Newer)

As discussed above, we have considered whether a fuel has similar effects on emissions, materials compatibility, and driveability when defining what fuels are substantially similar to certification fuel. Based on existing data and our engineering judgement, we have concluded that E15 at 9.0 psi RVP, with its additional oxygen content, would have effects on emissions, materials compatibility, and drivability substantially similar to Tier 3 E10 certification fuel (also at 9.0 psi RVP) in Tier 3 vehicles. While test data is still limited on Tier 3 vehicles, we have been able to draw upon test data and information on prior year motor vehicles (primarily NLEV and Tier 2 certified vehicles representative of MY2001 and newer light-duty motor vehicles) to support this conclusion as the impacts on Tier 3 motor vehicles are expected to be of a similar or lesser concern than on prior year motor vehicles.

a. Exhaust Emissions

In the 2010 and 2011 CAA sec. 211(f)(4) partial waivers for E15, we concluded from available data that neither the immediate combustion effects nor the long-term durability impacts of operating on E15 would prevent MY2001 and newer light-duty motor vehicles from complying with their full useful life emission

[131] See 79 FR 23414, 23526 (April 28, 2014). See also 40 CFR 1065.710.

[132] E10 was granted a waiver under CAA sec. 211(f)(4) without any conditions, in contrast to other CAA sec. 211(f)(4) waivers, which included, for example, conditions on fuel characteristics such as RVP.

standards.[133] This decision was supported by a large study conducted by DOE that tested 27 high-sales vehicles spanning model years 2000 to 2007 [134] using ethanol splash blends made from Tier 2 certification gasoline (E0).[135] Analysis of the resulting data shows that E15 produced approximately 5 percent higher nitrogen oxides (NO_X), 4 percent higher non-methane organic gases (NMOG), and 4 percent lower CO compared to E10, though none of these differences was statistically significant. This work did not measure particulate matter (PM) emissions, but the expectation at the time was that PM should react to ethanol in a similar way as NMOG emissions.

Since the time of the 2010 and 2011 waiver decisions, additional data have been published on the effects of gasoline-ethanol blends on Tier 2 vehicles.[136] The EPAct/V2/E–89 study (referred to as the ''EPAct study''), jointly conducted by EPA, DOE/National Renewable Energy Laboratory (NREL), and the Coordinating Research Council (CRC) in 2009 to 2010, looked at the short-term effects of five fuel properties, including ethanol concentration, on emissions from 15 high-sales light-duty vehicles from MY2008. Measurements included gaseous pollutants, and PM, a pollutant whose relationship to fuel properties had previously not been examined in much detail for gasoline vehicles. The size and scope of this study allowed for statistical models to be developed that could be used to correlate the impacts of the five fuel properties, including ethanol concentration, on emissions, enabling projections to be made of the emission impacts of a wide range of fuels, not limited to those tested. Results generally confirmed the NO_X and CO emission impacts described above from the addition of ethanol to gasoline, while indicating that the effects on NMOG and PM are more complex and depend on other fuel parameters, such as the fuel's distillation profile and aromatics content.[137] [138] For example, comparing E15 and E10 fuels in the DOE study, the EPAct statistical models estimate approximately 2 percent higher NO_X, 4 percent lower NMOG, 2 percent lower CO, and 2 percent higher PM for E15. If we instead assume E10 market fuel as a starting point, the EPAct models project splash blending to E15 will produce 2 percent higher NO_X, 2 percent higher NMOG, 2 percent lower CO, and 4 percent higher PM.[139]

Another observation from this study was that the sensitivity of emissions to ethanol blending varied significantly across the test vehicles. Because the EPAct test fleet was designed to include a range of high-sales vehicles, it is reasonable to expect the average effect across the test vehicles to be representative of the in-use fleet of Tier 2 vehicles with port-fuel-injection.

Two studies (projects E–94–2 and E–94–3) published by CRC in 2017 and 2018, respectively, examined the effects of ethanol and PM Index on PM and other emissions from MY2012 to2015 Tier 2 vehicles, all with gasoline direct injection (GDI) engines and several with turbocharging.[140] [141] The E–94–2 study used a parametric design, meaning one fuel property was changed at a time while holding others constant; so for example, test fuels differing in ethanol content were matched in PM Index, T50, RVP, and several other properties.[142] Results for the overall test fleet of 16 vehicles in E–94–2 showed no statistically significant effect of E10 relative to E0 for total hydrocarbons (THC), NO_X, or CO, while PM increased by 19 percent for the regular-grade (87 anti-knock index or AKI) test fuels. The E–94–3 study tested a four-vehicle subset on four E10 splash blends made from the E0 fuels in E–94–2, and found a PM increase of 21% on average, consistent with the effect found in the larger E94–2 study. Assuming this PM effect is linear over small fuel changes, we would expect around 10 percent higher PM when moving from E10 to E15. Comparing these results to the EPAct study and DOE study above suggests that later-technology vehicles with direct injection (though still certified to Tier 2 emission standards) have equal or lower sensitivity to ethanol for gaseous emissions, but may be more sensitive for PM.

Another study published in 2018 by the University of California, Riverside Center for Environmental Research and Technology (CE–CERT) looked at the effects of ethanol and aromatics on emissions from five vehicles, model years 2016 or 2017, all with GDI engines and certified to Tier 3 and/or LEV III standards.[143] While this provides a useful look at recent-model technology impacts, it should be noted that, because this study only employed five test vehicles, we are less certain how well this study's average effects represent this technology type in the in-use fleet. The test fuels included E0, E10, and E15 that were closely aligned on aromatic content (at two levels, 21 percent and 29 percent by volume) but the mid-point distillation temperature (T40–T50) was uncontrolled, and declined significantly as the ethanol content increased.[144] Results of this study showed no statistically significant difference in NO_X, non-methane hydrocarbons (NMHC), or PM when comparing E15 to E10 at either aromatics level. While not statistically significant, a trend of increasing PM with an increase in ethanol content was observed at the higher aromatics level, suggestive of a reinforcing interaction between ethanol and aromatics that has been described in other published work. At the lower aromatics level, the trend

[133] See 75 FR 68096 (November 4, 2010).

[134] This study was designed to evaluate the long-term exhaust emissions effects of E15 on NLEV and Tier 2 light-duty vehicles.

[135] Knoll, K., West, B., Huff, S., Thomas, J. et al., ''Effects of Mid-Level Ethanol Blends on Conventional Vehicle Emissions,'' SAE Technical Paper 2009–01–2723, 2009. This preamble refers to this study as ''the DOE study''.

[136] Tier 2 vehicles generally include light-duty motor vehicles produced between MY2007–2019. Some manufacturers began making Tier 2 vehicles as early as MY2004 and some can continue to do so as late as MY2021.

[137] EPA Office of Transportation and Air Quality. ''EPAct/V2/E–89: Assessing the Effect of Five Gasoline Properties on Exhaust Emissions from Light-Duty Vehicles Certified to Tier 2 Standards: Final Report on Program Design and Data Collection''. EPA–420–R–13–004. April 2013. The preamble refers to this as ''the EPAct Study''.

[138] Butler, A., Sobotowski, R., Hoffman, G., and Machiele, P., ''Influence of Fuel PM Index and Ethanol Content on Particulate Emissions from Light-Duty Gasoline Vehicles,'' SAE Technical Paper 2015–01–1072, 2015, doi:10.4271/2015–01–1072.

[139] Since these figures represent the output of multivariate models whose coefficients survived a process of statistical testing, they are interpreted as meaningful despite being small.

[140] Morgan, Peter; Smith, Ian; Premnath, Vinay; Kroll, Svitlana; Crawford, Robert. ''Evaluation and Investigation of Fuel Effects on Gaseous and Particulate Emissions on SIDI In-Use Vehicles''. SwRI 03.20955. Southwest Research Institute, San Antonio, TX. CRC E–94–2. Coordinating Research Council, Alpharetta, GA. March 2017.

[141] Morgan, Peter; Lobato, Peter; Premnath, Vinay; Kroll, Svitlana; Brunner, Kevin; Crawford, Robert. ''Impacts of Splash-Blending on Particulate Emissions for SIDI Engines''. SwRI 03.20955–1. Southwest Research Institute, San Antonio, TX. CRC E–94–3. Coordinating Research Council, Alpharetta, GA. June 2018.

[142] This parametric study design is referred to as ''match blending'', where the hydrocarbon components of each test fuel are adjusted so that specific properties, such as octane, RVP, and/or aromatics content, are matched across different ethanol levels in the final blends. This is in contrast to ''splash blending'', where no effort is made to control fuel properties as ethanol is added, making it impossible to ascertain whether observed impacts are due to the presence of ethanol or the other resulting changes in the fuel.

[143] Karavalakis, G; Durbin, T; Yang, J; Roth, P., ''Impacts of Aromatics and Ethanol Content on Exhaust Emissions from Gasoline Direct Injection (GDI) Vehicles''. University of California, CE–CERT, April 2018.

[144] The EPAct study found T50 to have a meaningful and statistically significant impact on NMOG, NMHC, NO_X, and PM emissions. Consequently, the results of this study are likely confounded by changes in mid-point distillation, making it difficult to ascertain statistically significant impacts of the ethanol content changes and limiting the usefulness of the study.

suggests PM increase from E0 to E10 and then decrease from E10 to E15.

While there are limited data on Tier 3 vehicles, the results of the Tier 2 and Tier 3 vehicle studies cited above are nevertheless largely consistent with each other given that ethanol blending affects many other fuel properties, given that ethanol is blended into gasoline in various ways that affect the collateral property changes differently, and given the varying impacts from vehicle to vehicle. This makes it difficult to interpret trends across the body of literature without detailed information on multiple fuel properties. However, since the early 1990s, a number of programs have studied the effects of ethanol on emissions from earlier vintage vehicles, and based on these studies, emissions models have been published, including the Complex Model,[145] Predictive Model,[146] and MOVES simulator,[147] and the results from the more recent studies are also largely consistent with them given the vehicle to vehicle differences, uncontrolled variables, and statistical uncertainty. Namely, ethanol blending causes slight increases in NO_X emissions and slight decreases for CO emissions.

Earlier studies did not evaluate PM emission impacts from ethanol blending, so we are limited to consideration of only the more recent studies. The CRC E–94–3 and CE–CERT studies both tested ethanol splash blends in recent model year GDI vehicles, and one found an increase in PM with incremental ethanol (E0 to E10) while the other showed no significant impact (E10 to E15). Neither study controlled T50 between ethanol levels, but a notable difference between them was the range of T50 levels in the test fuels. The E10 test fuel in the CE–CERT study had lower T50 levels and additional ethanol blending depressed T50 significantly, more consistent with what we would expect in a median market fuel moving to E15, versus the higher T50s in the CRC study where E10 was the upper blend limit.[148] [149] Applying the findings of the EPAct study to the CE–CERT study suggests that the PM reduction from declining T50 in the low-aromatic CE–CERT E15 would have offset a small PM increase caused by ethanol's hindrance of droplet evaporation, as described elsewhere in the literature.[150] [151] In the case of the high-aromatics fuels in that study, the PM trend suggests this T50 benefit was not sufficient to fully overcome the droplet cooling effect. As a general conclusion, it seems reasonable to accept the CE–CERT study conclusion that moving from E10 to E15 in a T50, aromatics, and PM Index space representative of typical market fuels is not expected to produce a significant increase in tailpipe PM emissions from Tier 2 and 3 vehicles.

While some criteria pollutants would have relative increases (NO_X) and others have similar decreases (VOC and CO) while still others are less certain (PM) on E15 compared to E10, these changes are all relatively small. In the E15 CAA sec. 211(f)(4) partial waivers, we determined that effects of this magnitude were too small to cause or contribute to MY2001 and newer light-duty motor vehicles to exceed the vehicles' certified exhaust emissions standards and we expect that this would also be the case for Tier 3 vehicles. To put this into context, Table II.C–1 shows gram-per-mile exhaust emission standards (limits) for FTP-cycle certification of new light-duty motor vehicles under recent Federal regulatory programs. Vehicle manufacturers typically try to calibrate their products to have compliance margins of on the order of 50 percent when new to ensure they will meet emission requirements over their full useful lives, meaning their actual emission level is often about half the standard. The Tier 3 standards are still being phased in, but we expect compliance margins may be somewhat smaller as the lower emission levels such as Tier 3 Bin 30 are more challenging to meet. In any case, these margins are significantly larger than even the 10 percent PM effect estimated from the CRC E–94–3 study.

TABLE II.C–1—FTP-CYCLE EXHAUST EMISSION STANDARDS FOR RECENT LIGHT-DUTY PROGRAMS

Certification level/bin	NO_X (g/mi)	NMOG (g/mi)	CO (g/mi)	PM (mg/mi)
NLEV/TLEV	0.4	0.125	3.4	.....
Tier 2/Bin 5	0.05	0.075	3.4	10
Tier 3/Bin 30	0.030 NMOG + NO_X		3.4	3

While CAA sec. 211(f)(1) does not define the magnitude of acceptable emission impacts or other specific criteria for how to determine whether a fuel or fuel additive is substantially similar to certification fuel, we believe that the small changes in exhaust emissions compared to the certification levels for E15 relative to Tier 3 E10 certification fuel used in Tier 3 vehicles can be considered to be within the scope of what we have determined to be sub sim in our prior sub sim interpretive rulemakings. For example, if a Tier 3 vehicle were certified on E10 fuel with PM emissions of 2.0 mg/mi (33% compliance margin), a 10% PM increase due to fueling the vehicle with E15 would increase its PM emissions to 2.2 mg/mi. This is still significantly below its 3 mg/mi compliance limit (26% compliance margin).

Therefore, we believe that E15 is sub sim to Tier 3 E10 certification fuel from the perspective of exhaust emissions for Tier 3 light-duty motor vehicles.

[145] See ''Complex Model Used to Analyze RFG and Anti-dumping Emissions Performance Standards,'' available at *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/complex-model-used-analyze-rfg-and-anti-dumping.*

[146] See ''California Gasoline Predictive Models, and CARBOB Model Development,'' available at *https://www.arb.ca.gov/fuels/gasoline/premodel/pmdevelop.htm.*

[147] See ''Moves and Other Mobile Source Emissions Models,'' available at: *https://www.epa.gov/moves.*

[148] ''Fuel Trends Report: Gasoline 2006–2016.'' US EPA Office of Transportation and Air Quality, Washington, DC. EPA420–R–17–005. October, 2017. See Section 6.C.f. on E200 data, which can be converted to T50.

[149] ''Determination of the Potential Property Ranges of Mid-Level Ethanol Blends.'' American Petroleum Institute, Washington, DC. April 2010. See Figure 7.

[150] Butler, A., Sobotowski, R., Hoffman, G., and Machiele, P., ''Influence of Fuel PM Index and Ethanol Content on Particulate Emissions from Light-Duty Gasoline Vehicles,'' SAE Technical Paper 2015–01–1072, 2015.

[151] Burke, S., Rhoads, R., Ratcliff, M., McCormick, R. et al., ''Measured and Predicted Vapor Liquid Equilibrium of Ethanol-Gasoline Fuels with Insight on the Influence of Azeotrope Interactions on Aromatic Species Enrichment and Particulate Matter Formation in Spark Ignition Engines,'' SAE Technical Paper 2018–01–0361, 2018.

b. Evaporative Emissions

EPA has set evaporative emission standards for motor vehicles since 1971. During the ensuing years, these evaporative standards have continued to evolve, resulting in additional evaporative emissions reductions. Consideration of whether E15 is substantially similar to Tier 3 E10 certification fuel for evaporative emissions requires consideration of the applicable evaporative emissions standards to which the particular motor vehicles were certified, in this case Tier 3 motor vehicles. There are now six main components to motor vehicle evaporative emissions that are important for our standards: (1) Diurnal (evaporative emissions that come off the fuel system as a motor vehicle heats up during the course of the day); (2) refueling emissions (evaporative emissions that come off the fuel system as the vehicle is refueled); (3) hot soak (evaporative emissions that come off a hot motor vehicle as it cools down after the engine is shut off); (4) running loss (evaporative emissions that come off the fuel system during motor vehicle operation); (5) permeation (evaporative emissions that come through the walls of elastomers in the fuel system and are measured as part of the diurnal test); and (6) unintended leaks due to deterioration/damage that is now largely monitored through onboard diagnostic systems.

For hot soak, permeation, and unintended leak evaporative emissions, we expect that E15 would have a similar effect as Tier 3 E10 certification fuel. In the E15 partial waivers, we stated that we did not expect that E15 would have an effect on hot soak, permeation, and unintended leak evaporative emissions based on a review of the data and on the fact that auto manufacturers have been required to age vehicles on E10 for evaporative emissions durability testing since MY2004. We are not aware of any information suggesting that Tier 3 vehicles would behave differently since they are aged for evaporative emissions durability on E15 and certified on Tier 3 E10 certification fuel. Furthermore, in our review of the testing of permeation on pre-Tier 3 vehicles (*i.e.,* prior to changes made to address permeation) in the E15 partial waiver decisions, while ethanol was shown to significantly worsen permeation emissions, the effect appears to be fully reached at E10, as there was no discernable worsening of the impacts at higher ethanol concentrations.[152] Vehicle manufacturers have now redesigned their fuel systems to control permeation on E10 sufficiently to meet the Tier 3 evaporative emission standards. Consequently, we do not anticipate permeation emissions with E15 to be any higher than with E10.

Refueling, diurnal, and running loss evaporative emissions are mostly a function of volatility of the fuel. As discussed in Section II.C.4, to determine whether a fuel is sub sim to Tier 3 E10 certification fuel, it is necessary to evaluate the volatility of the fuel relative to Tier 3 E10 certification fuel. This is because the volatility plays a significant role in these evaporative emission sources independent of the level of ethanol concentration in the fuel. For this sub sim determination, we are evaluating whether E15 at 9.0 psi is sub sim to Tier 3 E10 certification fuel at 9.0 psi. In general, if two fuels have the same RVP, the expected refueling, diurnal, and running loss evaporative emissions from the two fuels would be similar regardless of the ethanol content. In this situation, since there is no difference in RVP, E15 at 9.0 psi RVP would be expected to have essentially identical evaporative emissions to E10 at 9.0 psi RVP from refueling, diurnal, and running loss emissions sources. We find that E15 at 9.0 psi RVP is sub sim to Tier 3 E10 certification fuel at 9.0 psi RVP for Tier 3 light-duty motor vehicles.

c. Materials Compatibility

Materials compatibility is a key factor in considering what fuels or fuel additives are sub sim to certification fuel, insofar as poor materials compatibility can lead to serious exhaust and evaporative emission compliance problems not only immediately upon use, but especially over the full useful life of vehicles and engines. In the E15 partial waivers, we determined that the use of E15 in MY2001 and newer light-duty motor vehicles ''will not [result in] materials compatibility issues that lead to exhaust or evaporative emissions exceedances.'' [153] We explained that ''[n]ewer motor vehicles, such as Tier 2 and NLEV vehicles (MY2001 and newer), on the other hand, were designed to encounter more regular ethanol exposure compared to earlier model year motor vehicles'' since EPA's in-use verification program would require auto manufacturers to place more ''emphasis on real world motor vehicle testing'' prompting manufacturers to consider commercially available fuels containing ethanol when developing and testing their emissions systems.[154] Based on this assessment, in addition to confirmatory data from DOE's extensive test program that aged MY2001 and newer motor vehicles up to 120,000 miles on E15, we concluded that MY2001 and newer motor vehicles would not have materials compatibility issues with E15.

Since granting the E15 partial waivers, E15 is now used as an aging fuel for service accumulation for evaporative durability testing.[155] Auto manufacturers have used E15 for service accumulation for evaporative durability testing since at least MY2014. This means that many Tier 2 vehicles since MY2014 and all Tier 3 vehicles have been aged on E15 and have been designed with materials capable of handling E15 for extended periods of time. As such, we expect that Tier 3 vehicles would have similar, if not better, materials compatibility with E15 compared to MY2001 and newer motor vehicles since Tier 3 vehicles since manufacturers are required to use E15 as an aging fuel for evaporative durability testing and therefore design these motor vehicles to encounter E15 in-use.

Therefore, we would not expect any materials compatibility issues from E15 in Tier 3 vehicles and we find that E15 would have substantially similar materials compatibility effects as Tier 3 E10 certification fuel.

d. Driveability

A change in the driveability of a motor vehicle that results in significant deviation from normal operation (*e.g.,* stalling, hesitation, etc.) would result in increased emissions. These increases may not be demonstrated in the emission certification test cycles but instead are present during in-use operation. In addition to consumer dissatisfaction, a motor vehicle stall and subsequent restart can result in significant increases in emissions because emission rates are typically highest during vehicle starts, especially cold starts. Further, concerns exist if the consumer or operator tampers with the motor vehicle in an attempt to correct the driveability issue since consumers may attempt to modify a motor vehicle from its original certified configuration. Thus, in defining substantially similar we have considered whether fuels or fuel additives have an adverse effect on driveability relative to certification fuel.

We concluded in the E15 partial waivers that we did not believe that E15 would cause driveability concerns for

[152] See 75 FR 68115–68120 (November 4, 2010) and 76 FR 4675–4681 (January 26, 2011).

[153] See 75 FR 68122–68123 (November 4, 2010); 76 FR 4681 (January 26, 2011).

[154] See 75 FR 68122 (November 4, 2010).

[155] See 40 CFR 86.1824–08(f)(1).

MY2001 and newer motor vehicles. We reviewed the data and information from the over 30 different test programs evaluated to grant the E15 partial waivers and we found ''no specific reports of driveability, operability or on-board diagnostics (OBD) issues across many different vehicles and duty cycles including lab testing and in-use operation.'' [156]

After granting the partial E15 waivers, we believe that late model Tier 2 and Tier 3 vehicles also have better capability of operating on E15, since as mentioned above, auto manufacturers have been required to use E15 as an aging fuel for evaporative durability aging since at least MY2014.

We also believe that the producers and distributors of gasoline adhere to ASTM specifications for gasoline (*i.e.,* ASTM D4814),[157] which helps address the driveability of gasoline that contains up to 15 volume percent ethanol. As E15 has been in the market since at least 2012, industry, through ASTM International, has worked to develop voluntary consensus-based standards to help ensure the quality of E15 made and used in the marketplace. For example, ASTM D4814–18c includes language to ensure that gasoline-ethanol blends have certain physical and chemical characteristics, such as distillation parameters falling within specified ranges, to ensure that when the gasoline-ethanol blended fuel is used, driveability issues will not arise.[158]

For these reasons, we find that E15 would have similar driveability characteristics to Tier 3 E10 certification fuel for Tier 3 light-duty motor vehicles.

e. Conclusion

For reasons described above, we find that E15 is substantially similar to Tier 3 E10 certification fuel when E15 is used in Tier 3 vehicles (*i.e.,* MY2020 and newer light-duty motor vehicles). As discussed above, when interpreting which fuels and fuel additives are sub sum to certification fuel under CAA sec. 211(f)(1), we consider the potential effects that a new fuel or fuel additive may have on a motor vehicle's emissions (exhaust and evaporative), materials compatibility, and driveability. Regarding emissions, we expect that E15 would exhibit similar exhaust and evaporative emissions for Tier 3 vehicles certified on Tier 3 E10 certification fuel. For materials compatibility and driveability, we find E15 is sub sim since E15 is being used as a service accumulation fuel for evaporative emissions aging and for the reasons described in the E15 partial waivers regarding materials compatibility and driveability for MY2001 and newer light-duty motor vehicles. For all the reasons described above, we find E15 is sub sim to Tier 3 E10 certification fuel for Tier 3 light-duty motor vehicles.

7. Technical Rationale for MY2001–2019 Light-Duty Motor Vehicles

We find that E15 is sub sim to Tier 3 E10 certification fuel in MY2001–2019 light-duty motor vehicles. As discussed in Section II.C.4, it is necessary to consider how E15 would perform relative to Tier 3 E10 certification fuel in each class of vehicles, engines, and equipment. In the E15 partial waivers, we considered the relative effects of E15 to E10 when used in these vehicles as a basis to determine that MY2001–2019 light-duty motor vehicles will not experience issues with materials compatibility and driveability.[159] Additionally, as described above in the analysis for Tier 3 vehicles, much of the emissions testing to date to evaluate the effects of E15 has been conducted on vehicles representative of MY2001–2019 light-duty vehicles. Based on this existing data and our prior engineering judgment expressed in the E15 partial waivers, we have concluded that E15, with its additional oxygen content and identical RVP relative to Tier 3 E10 certification fuel, would have effects on emissions, materials compatibility, and drivability substantially similar to E10 in MY2001–2019 light-duty motor vehicles.

a. Exhaust Emissions

In the E15 partial waivers, we argued that auto manufacturers developed vehicles around MY2001 to accommodate in-use exposure to E10, and that this accommodation would result in similar performance of emissions, materials compatibility, and driveability on E15.[160] We also pointed to the large compliance margins in certified exhaust emissions for NLEV and Tier 2 vehicles (collectively MY2001–2019 vehicles) in the E15 waiver decisions.[161] We contextualized the relatively small changes in emissions as a small fraction of the compliance margin and argued that these small changes would not cause MY2001–2019 motor vehicles to exceed their emissions standards.[162] We continue to believe that our engineering analysis presented in the E15 waivers is appropriate, and that MY2001–2019 motor vehicles will have substantially similar exhaust emissions on E15 when compared to Tier 3 E10 certification fuel.

As we stated in the first E15 partial waiver, ''the largest improvements to emission controls and hardware durability came after 2000 with the introduction of several new emission standards and durability requirements forcing manufacturers to better account for the implications of in use fuels on the evaporative and exhaust emission control systems.'' [163] Overall, the transition from Tier 1 (generally pre-MY2000 and older vehicles) to NLEV (generally MY2001–2003) and then to Tier 2 (generally MY2004–2019) exhaust standards called for design changes that all moved in the same direction of increased control of exhaust emissions through increasingly sophisticated emissions control systems aimed at reducing the level of emissions created by the combustion of the fuel in the engine combined with increased control of these emissions by the catalyst system. This increasing sophistication was based on better air fuel ratio control, and increased efficiency, durability and faster light-off of the catalyst. While Tier 2 standards called for the most sophisticated engine and catalyst system designs at the time, the NLEV standards prompted major redesign efforts by manufacturers that were later expanded and advanced even further to meet, and earn credits towards compliance with, Tier 2 standards. From an engineering perspective, the emissions control systems of pre-Tier 2, NLEV vehicles are significantly more robust than those used in MY2000 and older motor vehicles and more like those of Tier 2 motor vehicles in terms of the degree of sophistication of engine controls and catalyst technology. In the second E15 waiver decision, we reviewed the available emission control technologies of NLEV vehicles to determine that they had adapted most of the control strategies that were employed in Tier 2 vehicles.[164] These control strategies involved controlling for oxygen content of fuels to largely reduce the risks associated with gasoline-ethanol blended fuel use.

[156] See 76 FR 4681–82 (January 26, 2011).

[157] ASTM Standard D4814, 2019, ''Standard Specification for Automotive Spark-Ignition Engine Fuel,'' ASTM International, West Conshohocken, PA, 2003, DOI: 10.1520/C0033–03, *https://www.astm.org.*

[158] Id.

[159] See 75 FR 68124 (November 4, 2010) and 76 FR 4681–4682 (January 26, 2011).

[160] See 75 FR 68125–68126 (November 4, 2010) and 76 FR 4667 (January 26, 2011).

[161] See 75 FR 68111 (November 4, 2010) and 76 FR 4669 (January 26, 2011).

[162] Id.

[163] See 75 FR 68125 (November 4, 2010).

[164] See 76 FR 4669 (January 26, 2011).

Furthermore, we highlighted that another important regulatory change for improving the exhaust emissions control durability of MY2001–2006 light-duty motor vehicles was the Compliance Assurance Program (''CAP2000''), which took effect by MY2000 for light-duty motor vehicles. CAP2000 placed more emphasis on in-use performance of vehicle emission controls, including the potential impacts of operation from different available in-use fuels. In particular, the In-use Verification Program (IUVP) introduced under CAP2000 requires manufacturers to perform exhaust and evaporative emissions tests on customer vehicles in the in-use fleet to confirm the durability projections that manufacturers make at certification. These motor vehicles would now be exposed to gasoline-ethanol blends in use.

Another consideration in our engineering analysis in the second E15 waiver decision was the extent to which MY2001–2006 light-duty motor vehicles emit at levels below the applicable standards and therefore have a compliance margin. Compliance margins are generally designed into motor vehicles by manufacturers to account for possible variations in production vehicles and changes to vehicle emissions control systems from actual field usage, such as how the vehicle is typically operated and the type of fuel used. The larger the compliance margin, the more likely it is that vehicles would accommodate any emissions increases from fueling with E15 and continue to meet emission standards in-use. In the second E15 waiver decision, we surveyed the certification data for MY2001–2006 motor vehicles and the results showed that the average full useful life compliance margin (which accounts for in-use deterioration) for the entire MY2001– 2006 light-duty motor vehicle fleet was approximately 66 percent.[165] We also reviewed in-use data from the IUVP program, which indicated that motor vehicles actually achieved a similar compliance margin when operated in real-world conditions.[166] The size of the compliance margins for MY2001–2006 light-duty motor vehicles suggests manufacturers were in fact designing and building motor vehicles that were significantly cleaner than required as part of a planned migration to technologies capable of meeting the tighter Tier 2 standards.

We relied on the available literature, primarily the data collected from the DOE catalyst study, to confirm our engineering analysis of the emissions behavior of NLEV and Tier 2 vehicles. These data showed that E15 would not cause NLEV or Tier 2 vehicles to exceed their emissions standards both in the short- and long-term. Furthermore, most of the data discussed in Sections II.C.6.a and II.F were based on tests conducted on MY2001–2019 motor vehicles and we believe that the estimated emissions changes from using E15 relative to Tier 3 E10 certification fuel or E10 market fuel in MY2001–2019 are representative of vehicle technologies classes in this time period (*i.e.,* NLEV, Tier 2, and early Tier 3 vehicles).

Because of the extensive analysis in the E15 waiver decisions and the large compliance margins in the MY2001–2019 light-duty motor vehicle fleet, we find that E15 is sub sim to Tier 3 E10 certification fuel when used in those vehicles.

b. Evaporative Emissions

As mentioned in Section II.C.6.b, we evaluate evaporative emissions in terms of six sources of evaporative emissions: (1) Diurnal emissions, (2) refueling emissions, (3) hot soak, (4) running loss, (5) permeation, and (6) emissions from unintended leaks. In the E15 waiver decisions,[167] we explained that as with exhaust emissions, emission control improvements adopted in response to applicable regulatory requirements are important to the consideration of the potential impact of a fuel or fuel additive on evaporative emissions. A number of regulatory actions occurred by MY2001 that placed an emphasis on the control of evaporative emissions and on real-world testing of motor vehicles, which in turn led to changes in evaporative emission control systems. These regulatory changes, together with test data reviewed in the E15 waivers,[168] support the conclusion that MY2001–2019 light-duty motor vehicles operated on E15 at 9 psi RVP would have similar evaporative emissions if those vehicles were operated on Tier 3 E10 certification fuel.

As mentioned in Section II.C.6.b, we evaluated the effects E15 would have relative to E10 for hot soak, permeation, and unintended leak evaporative emissions in MY2001–2019 motor vehicles in the E15 waivers. We found that motor vehicles designed and aged on E10 for evaporative emissions durability would have similar hot soak, permeation, and unintended leak evaporative emissions if operated on E15. As explained in the first E15 partial waiver, since these elements are largely a function of the materials used to design the evaporative emission controls, if an auto manufacturer designed a system to encounter a gasoline-ethanol blended fuel in-use, it is likely that the vehicle's evaporative emissions control would handle E10 and E15 similarly. Therefore, we find that E15 is sub sim to Tier 3 E10 certification fuel for hot soak, permeation, and unintended leak evaporative emissions for MY2001–2019 motor vehicles.

Also, as mentioned in Section II.C.6.b, diurnal, refueling, and running loss emissions are mostly a function of the volatility of the gasoline used. If two fuels had the same volatility, we would expect the same or similar diurnal, refueling, and running loss emissions. As we are only considering whether E15 at 9.0 psi RVP is sub sim to Tier 3 E10 certification fuel with 9.0 psi RVP we can conclude that E15 at 9.0 psi RVP is sub sim to Tier 3 E10 certification fuel in MY2001–2019 light-duty motor vehicles. We base this finding on the fact that E15 at 9.0 psi would have the same volatility as Tier 3 E10 certification fuel.

c. Materials Compatibility

We find that E15 at 9 psi RVP is substantially similar to Tier 3 E10 certification fuel when used in MY2001–2019 light-duty motor vehicles as it relates to materials compatibility. Materials compatibility is a factor in considering whether a fuel is sub sim since poor materials compatibility can lead to serious exhaust and evaporative emissions compliance problems not only immediately upon using the new fuel or fuel additive, but especially over time.

Similar to Tier 3 vehicles, pre-Tier 2 and Tier 2 vehicles (MY2004–2019) were aged with E10 for evaporative durability beginning with MY2004. Due to this long-term exposure of E10, we explained in the first E15 waiver decision that these motor vehicles would not have materials compatibility issues. For NLEV vehicles, in the second E15 waiver decision, we argued that ''the CAP2000 in-use testing and durability demonstration requirements as well as the introduction of OBD leak detection monitors and enhanced evaporative emission test procedures have led manufacturers to design vehicles using materials that will continue to function properly with respect to evaporative emissions when

[165] See 76 FR 4669 (January 26, 2011).

[166] See 75 FR 68111–68112 (November 4, 2010) and 76 FR 4669 (January 26, 2011).

[167] See 75 FR 68112–68113 (November 4, 2010) and 76 FR 4673–4674 (January 26, 2011).

[168] See 75 FR 68120 (November 4, 2010) and 76 FR 4663–4664 (January 26, 2011).

gasoline-ethanol blends are used.'' [169] This includes materials compatible with long-term use of gasoline-ethanol blends, as the standards apply for the useful life of the vehicle, and the IUVP test program and the OBD leak detection requirement monitor compliance throughout the useful life. We noted in the second E15 waiver decision that data from IUVP, EPA's in-use surveillance program, and manufacturer emission defect information reports had not detected any failures attributable to ethanol up to E10 in these vehicles.[170]

Based on our engineering judgment discussed in the E15 waiver decisions, we expect that there will not be materials compatibility issues with E15 in MY2001–2019 light-duty motor vehicles. Therefore, we conclude that E15 at 9.0 RVP is sub sim to Tier 3 E10 certification fuel in MY2001–2019 light-duty motor vehicles.

d. Driveability

We find that E15 at 9.0 psi RVP is substantially similar to Tier 3 E10 certification fuel when used in MY2001–2019 light-duty motor vehicles as it relates to driveability. As mentioned in Section II.C.7.a and described in the E15 partial waivers, auto manufacturers developed light-duty motor vehicles to use gasoline-ethanol blends that were becoming more prevalent in the marketplace by MY2001. This was tied to the implementation of new vehicles emission standards that focused on in-use performance in fuels; namely, the CAP 2000 program and NLEV for exhaust emissions, and the enhanced evaporative emission standards.[171] Additionally, as auto manufacturers began complying with the Tier 2 standards (beginning with MY2004), auto manufacturers were required to use E10 as an aging fuel for evaporative emission durability testing.[172] Due to this focus on in-use performance for MY2001 and newer light-duty motor vehicles, which were designed to run on E10 in use, we believe E15 would affect driveability similarly to Tier 3 E10 certification fuel used in these vehicles.

We evaluated driveability of MY2001–2019 vehicles extensively in the E15 partial waivers. In the first E15 partial waiver, we found that ''[t]here is no evidence from any of the test programs cited by Growth Energy or in the data from the DOE Catalyst Study of driveability issues for Tier 2 motor vehicles fueled with E15 that would indicate that use of E15 would lead to increased emissions or that might cause motor vehicle owners to want to tamper with the emission control system of their motor vehicle.'' [173] In the second E15 partial waiver, we found that ''[t]he Agency's review of the data and information from the different test programs finds no specific reports of driveability, operability or OBD issues across many different vehicles and duty cycles including lab testing and in-use operation [in MY2001–2006 light-duty motor vehicles].'' [174]

Based on both our engineering rationale that MY2001 and newer light-duty motor vehicles were designed by auto manufacturers to operate on gasoline-ethanol blends and our thorough review of the available literature in the E15 partial waivers, which showed no driveability, operability or OBD issues across over 30 reviewed studies on E15 covering MY2001 and newer vehicles, we find that E15 at 9.0 psi RVP is substantially similar to Tier 3 E10 certification fuel when used in MY2001–2019 light-duty motor vehicles as it relates to driveability.

e. Conclusion

We find that E15 at 9.0 psi RVP is sub sim to Tier 3 E10 certification fuel when used in MY2001–2019 vehicles. In conjunction with our finding that E15 at 9.0 psi RVP is sub sim to Tier 3 E10 certification fuel when used in MY2020 and newer light-duty motor vehicles (*i.e.,* Tier 3 certified light-duty vehicles) as discussed in Section II.C.6, these findings collectively mean that we find that E15 at 9.0 psi RVP is sub sim to Tier 3 E10 certification fuel when used in MY2001 and newer light-duty vehicles.

8. Technical Rationale for Other Vehicles, Engines, and Equipment

We conducted an analysis of whether E15 is substantially similar to E10 certification fuel for MY2000 and older light-duty motor vehicles, heavy-duty gasoline-fueled motor vehicles, and nonroad vehicles, engines, and equipment. For the reasons explained below, we conclude that E15 is not sub sim to E10 certification fuel for these types of vehicles and engines.

a. MY2000 and Older Light-Duty Motor Vehicles

We conclude that E15 would not be substantially similar to Tier 3 E10 certification fuel used in MY2000 and older light-duty motor vehicles. As we argued in the first E15 partial waiver decision and in the MMR, MY2000 and older light-duty motor vehicles were generally not designed to operate on gasoline-ethanol blended fuels.[175] We determined that E15 in these vehicles could lead to increases in emissions that result in vehicles exceeding certified emission standards and issues with materials compatibility as auto manufacturers likely did not use components compatible with ethanol in fuel systems.

MY2000 and older light-duty motor vehicles have much less sophisticated emissions control systems compared to more modern vehicles and, may experience conditions that lead to immediate emission increases and may exceed their emission standards if operated on E15. Vehicles produced prior to the mid-1980s were equipped primarily with carbureted engines. The air/fuel (A/F)ratio of the carburetor is preset at the factory based on the expected operating conditions of the engine such as ambient temperature, atmospheric pressure, speed, and load. As a result, carburetors have ''open loop'' fuel control, which means that the air and fuel are provided at a specified, predetermined ratio that is not automatically adjusted during vehicle operation. As fuel composition can vary, an engine with a carburetor and open loop fuel control would never detect whether the desired A/F ratio was achieved. Since the vehicles produced prior to the mid-1980s operated ''open loop'' all of the time with no ability to react to changes in the A/F ratio, the addition of ethanol to the fuel tended to make the A/F ratio leaner, typically resulting in an immediate emission impact of reducing HC and CO emissions, but increasing NO_X emissions. However, some of these older open loop systems already operate at the lean edge of combustion on current commercial fuels so an increase in ethanol may cause them to begin to misfire resulting in HC and CO increases. Concerning long-term exhaust emissions, in the first E15 waiver, we concluded that for MY2000 and older light-duty motor vehicles, enleanment [176] resulting in higher exhaust temperatures could cause accelerated catalyst deterioration which

[169] See 76 FR 4681 (January 26, 2011).

[170] See 76 FR 4681 (January 26, 2011).

[171] See 75 FR 68104 (November 4, 2010) and 76 FR 4680 (January 26, 2011).

[172] See 40 CFR 86.113–04.

[173] See 75 FR 68097 (November 4, 2010).

[174] See 76 FR 4681–4682 (January 26, 2011).

[175] See 75 FR 68125–68126 (November 4, 2010) and 76 FR 44412 (July 25, 2011).

[176] Enleanment refers to increasing the amount of oxygen in the mixture of air and fuel that enters the engine for combustion. At any one air to fuel ratio, adding ethanol to the fuel adds additional oxygen to the mixture of air and fuel, tending to enlean the mixture.

would result in higher emissions long-term.[177]

Concerning materials compatibility, in the first E15 partial waiver we found that ''a number of pre-Tier 2 motor vehicles, including Tier 0 motor vehicles (from the 1980s to 1995) and Tier 1 motor vehicles (from 1996 to 2001), may have been designed for only limited exposure to E10 and consequently may have the potential for increased material degradation with the use of E15 even though they are beyond their useful life requirements.'' [178] We argued further that degredation of fuel systems and emission controls from compatibility issues could result in higher emissions and emission control failure due to corrosion.

Due to the potential increases in vehicles emissions and issues with materials combability, we prohibited MY2000 and older light-duty motor vehicles from using E15.[179] We continue to believe that MY2000 and older light-duty motor vehicles were not designed to operate on E15 gasoline-ethanol blends and that E15 would not be sub sim to Tier 3 E10 certification fuel in those vehicles. As we found in the first E15 waiver decision, we believe that going from E10 to E15 in these vehicles could damage the emission controls and lead to increased emissions. Therefore, we conclude that E15 is not sub sim to Tier 3 E10 certification fuel in MY2000 and older light-duty motor vehicles.

b. Heavy-Duty Gasoline-Fueled Motor Vehicles

As discussed in the first E15 waiver decision and the MMR, we have concerns for E15 use in heavy-duty gasoline-fueled motor vehicles that are similar to our concerns regarding E15 use MY2000 and older vehicles.[180] We believe that heavy-duty gasoline-fueled motor vehicles have historically lagged in adoption of adaptive fuel controls similar to MY2000 and older vehicles, and we have no new information to cause us to reconsider E15 use in these vehicles. For all of the reasons discussed in Section II.C.8.a, we find that E15 is not sub sim to Tier 3 E10 certification fuel for heavy-duty gasoline fueled motor vehicles.

c. Nonroad Vehicles, Engines, and Equipment (Including Motorcycles and Marine Engines)

Due to the potential effects on emissions and materials compatibility, we cannot determine that E15 is sub sim to Tier 3 E10 certification fuel when used in nonroad products, motorcycles, or marine engines. The sub sim definition in this action for E15 restricts the applicability of the sub sim definition from applying to nonroad vehicles, engines, and equipment (''nonroad products''), highway and off-highway motorcycles (collectively called ''motorcycles''), and marine engines. As discussed in Section II.C.9, we believe it appropriate to limit the applicability of a sub sim definition to those vehicles, engines, and equipment for which EPA is able to determine that the fuel or fuel additive is suitable for use.

In the first E15 partial waiver, we denied the E15 waiver request for all nonroad vehicles, engines, and equipment (''nonroad products''). As described in detail in the first E15 partial waiver, nonroad products typically have less complex engine designs, fuel systems, and controls than light-duty motor vehicles.[181] We also expressed concerns with the use of E15 in nonroad products, particularly with respect to long-term exhaust and evaporative emissions and materials compatibility.[182] The limited information available in the public domain at the time of the first E15 waiver decision, supported our decision to not grant the E15 waiver request for nonroad products.[183] Additionally, we used our engineering rationale and the data evaluated from the first E15 waiver decision to prohibit the use of E15 in nonroad products under CAA sec. 211(c) in the MMR.[184]

We have similar concerns with E15 use in motorcycles and marine engines as these vehicles and engines have similar emission controls to other classes of nonroad products. These concerns were the basis for the denial of the E15 waiver request for all motorcycles and marine engines and extending the prohibition on E15 use in motorcycles and marine engines.

Since the E15 waivers and the MMR, little has changed with respect to ability of nonroad products to utilize E15. They continue to be certified on E0 and designed to run on gasoline-ethanol blends only up to E10. As highlighted in their public comments, the manufacturers of such engines continue to press for the need for greater outreach, education, and misfueling mitigation efforts beyond those already in place to protect their customers from E15, and the marine manufacturers have been actively testing isobutanol in concert with butanol coalition members to gain approval for its use in lieu of ethanol entirely due to their ongoing concerns with the use of ethanol at all in the marine environment. For these reasons, the sub sim determination in this action excludes from its scope these vehicles, engines, and equipment. This exclusion in conjunction with the prohibition on E15 use in these products promulgated under CAA sec. 211(c) in the MMR will continue to preclude the use of E15 in these products.

9. Limitations of ''Substantially Similar'' Interpretative Rulemaking

CAA sec. 211(f)(1)(B) prohibits fuel or fuel additive manufacturers from first introducing into commerce, or increasing the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles which is not substantially similar to any fuel or fuel additive utilized in the certification of motor vehicles or engines under CAA sec. 206. As explained above, we have interpreted the ''substantially similar'' provision several times to allow the introduction into commerce of certain fuel blends. The language of CAA sec. 211(f)(1) does not address whether and how EPA can restrict its determination that a particular fuel is ''substantially similar'' to a certification fuel. Given the fact that there have now been multiple certification fuels since 1977, when CAA sec. 211(f)(1) was first enacted, we believe it is reasonable to interpret this provision as allowing EPA to make a sub sim determination with respect to the use of the new fuel within certain parameters, where the parameters are intended to avoid the kinds of problems that prompted Congress to enact the general prohibition against introduction into commerce of fuels that are neither substantially similar nor have a CAA sec. 211(f)(4) waiver. Additionally, as discussed in Sections II.C.6–8, despite being sub sim for certain light-duty vehicles, E15 is inappropriate for use in vehicles, engines, and equipment other than MY2001 and newer light-duty vehicles. Therefore, without the sub sim determination being limited to the parameters described in this section, there would be no basis for a conclusion that E15 is ''substantially similar'' to Tier 3 certification fuel.

Congress did not speak directly to the question of whether CAA sec. 211(f)(1) provides EPA with authority to make a sub sim determination that is subject to appropriate parameters, and we believe that a sub sim determination within reasonable parameters intended to

[177] See 75 FR 68128 (November 4, 2010).

[178] See 75 FR 68129 (November 4, 2010).

[179] See 76 FR 44448 (July 25, 2011).

[180] See 75 FR 68138 (November 4, 2010) and 76 FR 44409 (July 25, 2011).

[181] See 75 FR 68098 (November 4, 2010).

[182] See 75 FR 68134–68137 (November 4, 2010).

[183] See 75 FR 68137 (November 4, 2010).

[184] See 76 FR 44448 (July 25, 2011).

ensure that the fuel at issue is in fact ''substantially similar'' to the relevant certification fuel is appropriate. Here, where EPA's sub sim determination for E15 is based on a determination that E15 is substantially similar to a certification fuel that is used to certify only a subset of the vehicle fleet, and the Agency has already determined that E15 cannot be used in certain vehicles and engines, it is necessary for EPA's sub sim determination to acknowledge certain parameters in order to ensure that the purpose of CAA sec. 211(f)(1) is maintained. As explained in Section II.A.1, the intent behind the enactment of CAA sec. 211(f)(1) was to prevent of the use of any new or recently introduced additive to unleaded gasoline that could impair the emission performance of vehicles [185]—as explained above, this is the same rationale underpinning the parameters within which we make this final sub sim determination. Congress recognized that the analysis required to control or prohibit the manufacture or introduction into commerce of a fuel or fuel additive under CAA sec. 211(c) may be a lengthy process.[186]

Given this context and the legislative history leading to the enactment of CAA sec. 211(f)(1), the parameters within which we make our sub sim determination today represent a reasonable exercise of our CAA sec. 211(f)(1) authority.

As discussed below, in this action we are establishing criteria on our E15 sub sim finding consistent with the rationale underpinning the enactment of CAA sec. 211(f)(1), and our prior interpretation of our authority to make a sub sim finding within certain parameters under CAA sec. 211(f)(1) or to place certain conditions on a CAA sec. 211(f)(4) waiver from sub sim. Given the direct impact on emissions and the indirect impact on emission through impacts on materials compatibility, and driveability, the parameters within which we are making our E15 sub sim finding address these three areas.

One implication of a sub sim interpretation that includes E15 under CAA sec. 211(f)(1) would be that a waiver under CAA sec. 211(f)(4) will no longer be necessary for E15 to be introduced into commerce. This would in effect remove the conditions of the E15 partial waivers imposed on fuel and fuel additive manufacturers, in the absence of any limitations on the sub sim interpretation. This would mean that the conditions in the E15 partial waivers designed to limit the introduction into commerce of E15 to only MY2001 and newer light-duty motor vehicles would not apply. We have already promulgated parallel restrictions in our regulations in the E15 MMR rulemaking at 40 CFR part 80, subpart N.[187] However, some conditions in the E15 partial waivers are not part of the MMR. One such condition is the requirement that fuel and fuel additive manufacturers have an EPA-approved misfueling mitigation plan (MMP) prior to introducing E15 into commerce.

While MMPs generally commit fuel and fuel additive manufacturers to adhere to regulatory requirements of the MMR, MMPs also commit these manufacturers to participate in public outreach on the appropriate use of E15 and allow for specific, additional misfueling mitigation measures that may apply in a manufacturer's specific situation. We believe that the continued existence of MMPs is important when finding that E15 is sub sim. The MMPs help prevent the use of E15 in MY2000 and older motor vehicles, nonroad vehicles, engines, and equipment (including motorcycles, and heavy-duty motor vehicles). Without the MMPs, there is an increased risk of misfueling which would directly impact the effects of the E15 on emissions, materials compatibility and drivability in MY2000 and older motor vehicles and nonroad, heavy-duty, and motorcycle vehicles and engines. We denied the E15 waiver request for MY2000 and older motor vehicles, nonroad vehicles, engines, and equipment (including motorcycles, and heavy-duty motor vehicles) due to our engineering assessment that these vehicles, engines, and equipment may experience emissions failures over these vehicles, engines, and equipments' full useful lives.

Also, as discussed above, in the MMR we concluded that under CAA sec. 211(c)(1)(A), the likely result would be increased VOC, CO, and NO_X emissions were these particular engines, vehicles, and equipment to use E15. The prohibitions and regulatory requirements were designed to help mitigate the misfueling of E15 in these vehicles. There are still millions of MY2000 and older motor vehicles on the road (although they will over time make a smaller contribution to vehicle miles travelled) and hundreds of millions of pieces of nonroad equipment not designed for and prohibited from E15 use. The existing conditions on the E15 partial waivers under CAA sec. 211(f)(4) help ensure E15 fuel quality and mitigate the misfueling of vehicles, engines, and equipment and we believe it is appropriate to continue to limit our sub sim determination to a determination that E15 is sub sim to Tier 3 E10 certification fuel only under parameters that reflect the existing conditions on the E15 partial waivers.

We also sought comment on whether this proposed sub sim interpretation for E15 should be limited to the subset of the national vehicle and engine fleet to which the current E15 waivers apply (MY2001 and newer light-duty motor vehicles) or on which our assessment in Section II.C.5 of the NPRM is based (*i.e.,* only to vehicles and engines certified using Tier 3 E10 certification fuel). After considering these comments, we find it appropriate to limit the applicability of our substantially similar determination in this case to certain classes of vehicles, engines, and equipment. The record has not changed with respect to the inability of older vehicles, nonroad equipment, motorcycles, or heavy-duty trucks to use E15, which formed the basis of our denial of the E15 waiver request for such vehicles, engines, and equipment. Furthermore, our assessment in Section II.C.5 of the NPRM found that the use of E15 in MY2000 or older light-duty gasoline motor vehicle, any heavy-duty gasoline motor vehicle or engine, any highway or off-highway motorcycle, or any gasoline-powered nonroad engines, vehicles or equipment is not substantially similar to Tier 3 E10 certification fuel. Such a limitation would be in recognition of the fact that, in contrast to the state of affairs at the time when CAA sec. 211(f)(1) was enacted, not all gasoline vehicles and equipment are certified on the same gasoline. All other vehicles, engines, and equipment prior to Tier 3 used certification fuel without ethanol, and some nonroad vehicles, engines, and equipment are still certified using E0. Another condition in the E15 partial waivers is that ethanol producers must manufacture denatured fuel ethanol that meets industry established quality standards if used to make E15. This requirement is not currently part of EPA's fuels regulations. For the new definition of sub sim for E15 in this action, we are updating criteria that establishes the physical and chemical parameters for the new definition of sub sim. We are making these changes largely to ensure that E15 that is introduced into commerce will continue to be sub sim to Tier 3 E10 certification fuel. We also do not believe that it would make sense to duplicate the criteria from the 2008 sub sim

[185] S. Rep. No. 95–127, 95th Cong., 1st Sess. 90 (1977).

[186] Id.

[187] See 75 FR 68127–68138 (November 4, 2010).

interpretation, especially since many of these updates are focused on accommodating a marketplace where E10 is predominant and E10 is now a certification fuel. For the new definition of sub sim for E15 in this action, we are updating the ASTM International specification references for volatility and driveability for the gasoline-ethanol blended fuels. We are also including a reference to the latest ASTM International denatured fuel ethanol (DFE) quality specification. Finally, we are updating the criteria for the use of additional fuel additives to be consistent with the Tier 3 gasoline sulfur requirements.

We received public comments suggesting that we update the reference to the ASTM standards for sub sim to the latest version of ASTM International standard D4814. One commenter noted that since E15 has a large effect on middle distillation (T50 in particular), EPA should reference the latest ASTM D4814 standard for gasoline as this standard helps ensure that gasoline-ethanol blends continue to meet the driveability index. The driveability index is a measure in the ASTM D4814 standard based primarily on the distillation characteristics of a fuel that helps ensures that spark-ignition engines operate correctly on gasoline. As discussed in Section II.C.6.d, fuels that cause issues with driveability can either directly increase emissions or result in consumers tampering with certified emissions configurations, which can result in increases in emissions. We agree with commenters that we should reference the latest version of ASTM D4814 as it relates to ensuring that the driveability index is met for gasoline-ethanol blends containing up to 15 volume percent. Therefore, we are specifying that only gasoline-ethanol blends that meet the applicable vapor pressure and distillation class requirements as specified in ASTM International Standard D4814–19 are considered physically and chemically substantially similar to Tier 3 E10 certification fuel.

Additionally, we believe it is appropriate that DFE used to produce E15 also needs to meet the latest ASTM International specifications for DFE, ASTM D4806–19. In the E15 partial waiver decisions, we imposed the condition that DFE used to make E15 under the waivers needed to meet a prior version of the ASTM ethanol specification. This condition was imposed in the E15 waivers under CAA sec. 211(f)(4) to help ensure that certain impurities in ethanol were limited to avoid issues with materials compatibility and help ensure quality of the gasoline-ethanol blended fuel when used in a vehicle or engine.[188] We believe it is still important to make sure that DFE used to make E15 meets ASTM D4806 specifications to ensure the quality of the E15. This will help ensure that materials compatibility and driveability are not adversely affected when E15 is used in 2001 and newer light-duty motor vehicles. Therefore, we are defining that only E15 made with DFE that meets ASTM D4806–19 is sub sim.

Finally, we are updating the criteria for additional fuel additives added to E15 that are introduced into commerce under the sub sim interpretation in this action to be consistent with fuel additive requirements for gasoline promulgated in the Tier 3 rule. In prior sub sim interpretations,[189] we limited additives under sub sim to a concentration of no more than 0.25 percent by weight of the finished fuel and to contribute no more than 15 parts per million (ppm) sulfur by weight to the finished fuel. In the sub sim interpretation for E15 in this action, we limit additional fuel additive(s) to a concentration of no more than 1.0 volume percent of the finished fuel and the additional fuel additive(s) must contribute no more than 3 ppm sulfur by weight to the finished fuel. Since we are defining E15 as sub sim to Tier 3 certification fuel when used in MY2001 and newer light-duty vehicles, we need to consider whether additional additives added to E15 would adversely affect emission controls in MY2001 and newer light-duty vehicles. We cannot find that an additive that is five times the specified applicable standard for sulfur content is sub sim to Tier 3 certification fuel, especially in Tier 3 vehicles. The Tier 3 rule set sulfur standards that would expose light-duty motor vehicles on average to sulfur levels of 10 ppm. If we issued the prior parameters for fuel additives under the sub sim interpretation in this action as the prior sub sim interpretations, this would allow the finished fuel to have a sulfur level of 25 ppm, or almost equal to the Tier 2 average sulfur standard of 30 ppm. This could largely negate the purpose of setting more stringent sulfur specification for Tier 3 certification fuel and imposing the Tier 3 gasoline sulfur standard. Therefore, we find that it would be inappropriate to adopt the criteria used in prior sub sim interpretations. We find that it is more appropriate to adopt the Tier 3 provisions for gasoline additives in the regulations at 40 CFR 80.1613 as these were specifically designed to ensure that Tier 3 light-duty vehicles emissions controls are protected from large increases in sulfur from gasoline additives.

10. Implications of ''Substantially Similar'' Interpretation

The new interpretation of ''substantially similar'' that E15 is sub sim to Tier 3 E10 certification fuel discussed in this section would make it lawful for refiners and importers to make and introduce into commerce E15 without the use of the CAA sec. 211(f)(4) E15 partial waivers.[190] This interpretation of ''substantially similar'' in conjunction with the interpretation of CAA sec. 211(h)(4) would extend the waiver from the CAA sec. 211(h)(1) upper RVP limit from 9.0 psi to 10.0 psi to fuels containing 9–15 percent ethanol during the high ozone season.

We intend for this definition to coexist with the existing definition of ''substantially similar'' (hereinafter ''the 2008 definition''). This is appropriate because the 2008 definition is in comparison to indolene, and the new interpretation is in comparison to Tier 3 E10 certification fuel. However, because there are now two certification fuels to which we can draw comparisons, and two definitions of sub sim relating to each fuel, we think it is important to describe how fuel and fuel additive manufacturers will continue to introduce into commerce their fuels and fuel additives and maintain their registrations under 40 CFR part 79. We intend for the existing CAA sec. 211(f)(4) waivers promulgated relative to ''indolene'' to remain available as an option for introduction into commerce for fuels that are nonetheless sub sim to Tier 3 E10 certification fuel. We have taken this approach recognizing that removing existing waivers has the potential to create confusion about the validity of historical introduction into commerce under these waivers and the continued validity of existing registrations for fuels and fuel additives under 40 CFR part 79. For the E15, after the sub sim definition in this action goes into effect, we will presume that fuel and fuel additive manufacturers that have already registered E15 or ethanol for use in the production of E15 under 40 CFR part 79 will introduce E15 into commerce under our new definition of sub sim (as opposed to the

[188] See 75 FR 68127–68138 (November 4, 2010).

[189] See 46 FR 38586 (July 28, 1981), 56 FR 5356 (February 11, 1991), and 73 FR 22281 (April 25, 2008).

[190] We are not asking fuel and fuel additive manufacturers who have existing E15 registrations under the CAA sec. 211(f)(4) waiver to submit new registrations.

211(f)(4) waiver for E15), unless we are told otherwise through an update to the fuel or fuel additive manufacturer's registration under 40 CFR part 79. This will allow fuel and fuel additive manufacturers and downstream parties to introduce E15 with the 1-psi waiver and not run afoul of the 9.0 psi waiver condition under the CAA sec. 211(f)(4) waivers without having to update their registrations under 40 CFR part 79.[191] We believe it would be unnecessarily burdensome to require the hundreds of registrants of E15 or ethanol for use in the production of E15 to update their registrations under 40 CFR part 79 to demonstrate that their E15 or ethanol for use in the production of E15 is sub sim in light of our finding that E15 is sub sim to E10 certification fuel in MY2001 and newer light-duty motor vehicles.

Because the CAA sec. 211(f)(4) waiver is a waiver from being ''substantially similar,'' once E15 is found to be sub sim the waiver is no longer needed in order to introduce E15 into commerce. However, as discussed previously, we intend for the CAA sec. 211(f)(4) waiver to remain available for the introduction of E15 into commerce. Therefore, as previously explained in Section II.A.3, the deemed to comply provision in CAA sec. 211(h)(4)(B), which was promulgated at the inception of the RVP program when industry had just begun blending ethanol in gasoline and requires that the ethanol portion of the blend not exceed the highest permissible ethanol content under the CAA sec. 211(f)(4) waiver, would remain effective with respect to E15. The CAA sec. 211(f)(4) waiver for E15 remains available for the introduction into commerce of E15, and therefore the statutory ''deemed to comply'' criterion that ''the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section'' can still be satisfied both by parties that introduce E15 into commerce under the CAA sec. 211(f)(4) waiver or the CAA sec. 211(f)(1) sub sim finding because the ethanol content under either is identical. Our regulations at 40 CFR 80.28, as modified in this action, condition the ''deemed to comply'' provision on specific ethanol content between 9 and 15 percent by volume. For reasons discussed in Section II.D.1, we are not modifying this provision, other than by increasing the maximum allowable ethanol percent from 10 to 15 to reflect our revised interpretation of the CAA sec. 211(h)(4), and thus this regulatory provision would still allow downstream parties to be deemed in compliance and ease the demonstration burdens for gasoline-ethanol blends that can be introduced into commerce under a CAA sec. 211(f)(4) waiver or a substantially similar determination. We are updating our existing regulations at 40 CFR 80.28 to allow for ethanol content up to 15 volume percent to utilize the ''deemed to comply'' provision. We find this treatment appropriate because CAA sec. 211(h)(4) in its entirety should be read to apply to gasoline-ethanol blends containing at least 10 percent ethanol.

The 1-psi waiver would be available to all fuel manufacturers (*i.e.,* refiners and importers) and downstream parties that produce, distribute and sell E15 due to the sub sim determination in this action. However, retailers that produce E15 via a blender pump would still not comply with EPA fuels regulations at 40 CFR parts 79 and 80 unless they make the E15 solely from DFE and certified gasoline (or CBOB). E15 produced at blender pumps could also continue to exceed even an increased RVP limit of 10.0 psi.[192] For further discussion of our fuels' regulations and blender pumps, see the RTC document, available in the docket for this action.

D. Regulatory Amendments

This action finalizes technical amendments that would effectuate our interpretation to allow the 1-psi waiver for E15 during the summer under CAA sec. 211(h)(4) and our interpretation that E15 is sub sim under CAA sec. 211(f) for MY2001 and newer light-duty vehicles. We are therefore taking these actions under both CAA sec. 211(f) and 211(h).

1. Modification of Regulations

First, we are modifying and removing volatility controls associated with our prior interpretation of CAA sec. 211(h)(4). These controls, found in 40 CFR 80.27, place limitations on the RVP of gasoline-ethanol blends at specific concentrations. Given that the primary effect of our proposed interpretation of CAA sec. 211(h)(4) would expand the ''special treatment for gasoline-ethanol blends'' to fuel blends containing 9–15 percent ethanol, we are modifying both: (1) Regulations extending the 1-psi waiver from gasoline containing 9–10 percent ethanol to gasoline containing 9–15 percent ethanol at 40 CFR 80.27; and (2) related defense provisions in 40 CFR 80.28.

In public comments, some commenters suggested that EPA remove the upper bound for ethanol content in 40 CFR 80.27 to be consistent with our new interpretation of CAA sec. 211(h)(4). In particular, they suggested that the regulation should provide the 1-psi waiver for any gasoline-ethanol blend containing at least 10 percent ethanol, or for any gasoline-ethanol blend containing at least 10 percent ethanol that has a waiver under 211(f)(4) or is ''substantially similar.'' In promulgating these regulations, we have determined that CAA sec. 211(h)(4) provides the lower bound for ethanol content, and CAA sec. 211(f) provides the upper bound. We do not find that it would be appropriate to codify in our regulations no upper bound, as the limitations on introduction into commerce under CAA sec. 211(f) are an important mechanism to protect the emissions controls of motor vehicles and nonroad products. Additionally, it would be inappropriate to allow any gasoline-ethanol blend that contains ten volume percent ethanol the 1-psi waiver without consideration in a rulemaking process.

Second, we are removing and modifying provisions in the MMR that were imposed to effectuate the prior 1-psi waiver interpretation under CAA sec. 211(h)(4). Subsequent to the grant of the CAA sec. 211(f)(4) partial waivers for E15, we adopted regulations under CAA sec. 211(c) to ensure that E15 would not be used in certain vehicles and engines for which the waivers did not apply and to effectuate our interpretation of 211(h)(4) at that time. To do so, in addition to the conditions on the waivers that applied to fuel manufacturers, we promulgated regulations to ensure that those same conditions were enforceable on downstream parties. No changes were made to the RVP regulations at 40 CFR 80.27 as a direct result of our interpretation under CAA sec. 211(h)(4) that the 1-psi waiver did not extend to gasoline-ethanol blends with an ethanol concentration greater than 10 percent. Additional regulations on parties that distribute E15 were put in place at 40 CFR 80.1504(f) and (g) (placing prohibitions on the commingling of E10

[191] Downstream parties who are not fuel or fuel additive manufacturers could also introduce E15 into commerce at 10.0 psi under the waiver conditions, even with today's sub sim determination, because those conditions only apply to fuel and fuel additive manufacturers, as discussed in Section II.D.3.

[192] We note that for E15 produced at blender pumps using E85 made with natural gas liquids, use of the deemed to comply provision to demonstrate compliance would not be available. This is because the RVP of natural gas liquids can be as high as 15.0 psi and even a small amount of natural gas liquids could cause the gasoline portion of the blend to not comply with the applicable RVP limitations established under CAA sec. 211(h), which is required under CAA sec. 211(h)(4)(A) to be deemed in compliance. Parties that make E15 at a blender pump using E85 made with previously certified gasoline can take advantage of the ''deemed to comply'' provision and associated affirmative defense at 40 CFR 80.28 if all applicable requirements in 80.28 are met.

and E15), and 40 CFR 80.1503 (placing PTD requirements on E15). These regulations were put in place in order to ensure that the RVP of E15 did not exceed 9.0 psi in accordance with our interpretation of CAA sec. 211(h)(4) at the time. However, since our new interpretation of CAA sec. 211(h)(4) increases the RVP allowance to 10.0 psi, these provisions are no longer necessary. Additionally, because the RVP of E15 will be approximately the same as E10 if produced from the same blendstock, we do not anticipate adverse emissions impacts from providing E15 the 1-psi waiver. Given that we are interpreting CAA sec. 211(h)(4) to extend to gasoline-ethanol blends of up to 15 percent ethanol, the prohibition on the commingling of E15 and E10 is no longer necessary.

Finally, we are removing the PTD requirements related to the 1-psi waiver at 40 CFR 80.1503. In 40 CFR part 80, subpart N, we included PTD language designed to help ensure that E15 that did not receive the 1-psi waiver would be segregated from E10 that did receive the 1-psi waiver. Since we are allowing the 1-psi waiver for E15, we no longer need these PTD requirements. However, parties that produce and distribute gasoline-ethanol blended fuels would still be required to identify ethanol concentrations on PTDs as specified in 40 CFR 80.27 and 40 CFR 80.1503.

2. Status of Misfueling Mitigation Rule Regulations

All other E15 misfueling mitigation provisions in 40 CFR part 80, subpart N, remain unchanged. In the MMR, we promulgated regulations under CAA sec. 211(c)(1), which prohibit the use of E15 in MY2000 and older motor vehicles, nonroad vehicles, engines, and equipment (including motorcycles, and heavy-duty motor vehicles). CAA sec. 211(c)(1) gives EPA authority to ''control or prohibit the manufacture, introduction into commerce, offering for sale, or sale'' of any fuel or fuel additive (A) whose emission products, in the judgment of the Administrator, cause or contribute to air pollution ''which may be reasonably anticipated to endanger public health or welfare'' or (B) whose emission products ''will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use'' were the fuel control or prohibition adopted. We promulgated the MMR based on our assessment that E15 would significantly impair the emission control systems used in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products supporting our action under CAA sec. 211(c)(1)(B). This led to our conclusion that under CAA sec. 211(c)(1)(A), E15 use in these particular vehicles, engines, and non-road products would likely result in increased VOC, CO, and NO_X emissions.[193] The regulatory changes to 40 CFR part 80, subparts B and N in this action are solely related to our proposed interpretation to allow the 1-psi waiver for E15 under CAA sec. 211(h)(4) and CAA sec. 211(f). This action does not change the basis of our CAA sec. 211(c)(1)(A) and (B) finding in the MMR that prohibits E15 from use in MY2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, highway and off-highway motorcycles, and all nonroad products. This action also does not modify the misfueling mitigation measures promulgated in the MMR.

3. Waiver Applicability

As discussed in the proposal, we interpret CAA sec. 211(f) as applying the waiver conditions to fuel and fuel additive manufacturers as defined in 40 CFR 79.2. Therefore, the regulatory amendments promulgated in this rulemaking apply to downstream parties, such as oxygenate blenders, who are not fuel or fuel additive manufacturers.[194] Accordingly, so long as downstream parties, such as oxygenate blenders, are only utilizing CBOB and denatured fuel ethanol to create E15, these parties can apply the 1-psi waiver and thus can blend and sell E15 at 10.0 psi.

We received comment on this mechanism for providing E15 the 1-psi waiver, and respond to those comments in the RTC document, available in the docket for this action. This interpretation of the applicability of the CAA sec. 211(f)(4) waiver conditions, in conjunction with our new interpretation of CAA sec. 211(h)(4), is an independent basis from the CAA sec. 211(f)(1) sub sim interpretation for the regulatory amendments finalized in this rulemaking.

We also find that, should fuel and fuel and additive manufacturers choose to introduce E15 into commerce under the CAA sec. 211(f)(4) waiver, these parties would continue to be subject to the 9.0 psi RVP limit in the waiver conditions for E15. Downstream parties that only add oxygenate in an allowable amount (*i.e.,* as allowed under the CAA sec. 211(f)(4) waivers) are not fuel and fuel additive manufacturers, and thus would not need to meet the 9.0 psi waiver condition.

E. Expected Impact of This Rule on E15 Use

We do not believe that providing E15 with the 1-psi waiver will substantially change the current trend in E15 use. E15 can currently be sold legally for use in MY2001 and newer light-duty motor vehicles in the United States under the 211(f)(4) waivers. It has been 9 years since EPA first granted the E15 211(f)(4) partial waivers; retailers currently offer E15 at roughly just 1 percent of retail stations as discussed in Section II.A.2. We expect that this slow adoption of E15 would continue even if we did not provide E15 the 1-psi waiver. However, we also do not expect this action to change the rate of growth appreciably. We believe that providing E15 with the 1-psi waiver will not result in a significant expansion of E15 offered at retail stations. This is due to the fact there are several hurdles, independent of EPA's fuels regulations, that inhibit the expansion of E15 into retail markets.

The chief hurdle to the introduction of E15 at additional retail stations is the requirement under 40 CFR 280.32 that retailers must demonstrate that underground storage tank (UST) systems are compatible with fuels stored at retail stations. Several commenters from the gasoline marketing and retail industry highlighted concerns over demonstrating compatibility of E15 with UST systems that have slowed the adoption of E15. Demonstrating compatibility can be especially difficult for some retailers as the full useful life of some UST system components can be up to 30 years and documentation of all of the various components often no longer exists, particularly when retail stations often change ownership several times during this time period.

Commenters also noted that a majority of retailers are small businesses that would need to make substantial investments to ensure the compatibility of UST systems and fuel dispensers with E15, which can cost up to hundreds of thousands of dollars per station depending on station configuration and what part of the UST system needs upgrading.[195] As

[193] 76 FR 44422 (July 25, 2011).

[194] Those fuel and fuel additive manufacturers would continue to be subject to the CAA sec. 211(f)(4) E15 partial waivers conditions, including the 9.0 psi RVP limitation. Therefore, in the absence of a sub sim interpretative rule finding that E15 is sub sim, we intend for the CAA sec. 211(f)(4) waiver to remain in effect.

[195] See ''Analysis of the Potential Use of Biofuels toward the Renewable Fuel Standard in 2014,''

Continued

commenters noted, the best opportunity to upgrade retail infrastructure is when it is time to turn over the UST system or fuel dispensers. As commenters noted, since less than 3 percent of retail stations turn over UST systems per year, this limits the opportunities for new E15 offerings.

Furthermore, not all retail stations that turn over their UST systems are going to offer E15. Much of the introduction of E15 to date has been in the Midwestern states, where blending incentives and investments in retail infrastructure have been present.[196] While some retailers in states outside the Midwest have begun offering E15, it has mainly been limited to retail stations with blender pumps. Therefore, we would expect far fewer than 3 percent of retail stations nationwide to turn over to E15 compatible UST systems annually. Historically, as there are less than 2,000 stations offering E15 nationwide and E15 has been a legal fuel for nine years, this translates to about a 0.1 percent increase in the number of retail stations offering E15 each year. We expect a comparable trend to continue.

Another hurdle to E15 market penetration highlighted by some commenters is a lack of consumer demand or consumer acceptance. These commenters noted that retailers will not limit their customer base and therefore will continue to make E10 available for vehicles, engines, and equipment that are not allowed to use E15.[197] For the foreseeable future, millions of MY2000 and older light-duty vehicles and hundreds of millions of nonroad vehicles, engines, and equipment will continue to be in use, and retailers will need to provide consumers with suitable fuels for these products. Given this continued demand for E10 and the practicality of offering fuels that are only usable in certain segments of the national fleet, many retailers have decided to offer E10 which is usable in the entire fleet rather than offering both E10 and E15. Additionally, as several commenters noted, consumers are not requesting that stations offer E15 instead of E10 and some consumers have questions over the use of E15 in their vehicles and engines (even when allowed to use E15 under the CAA). Some commenters noted that it has only been in the last few years (not 2001) that most automakers have begun to state in owner's manuals that E15 use is acceptable, and several large auto manufacturers still include language in their owner's manuals warning against E15 use; almost all owner's manuals for nonroad products warn against E15 use.[198] While we have evaluated whether E15 is sub sim to Tier 3 E10 certification fuel, we do not have authority under the CAA to impact what manufacturers put in their owner's manuals or how they implement their general warranties. The disparity between what vehicles and engines we have approved for E15 use under our 211(f) authority and which fuels manufacturers recommended using in owner's manuals can lead to confusion and lack of consumer acceptance of E15. This lack of consumer acceptance and demand has resulted in E15 stations being primarily located in the Midwestern states. As long as there is some uncertainty over whether vehicles, engines, and equipment can and should use E15, these commenters argue, retailers will be hesitant to offer E15. We believe that these comments, primarily submitted by marketers and retailers of gasoline, are accurate and we believe these hurdles all factor into our projection that this action is unlikely to appreciably impact E15 market penetration.

E15 also faces an economic challenge to market growth, even with the 1-psi RVP waiver. Since the fuel distribution system will for the foreseeable future only be capable of distributing BOBs designed for E10, refiners will be unable to take advantage of the increased octane value offered by 5 percent more ethanol in the gasoline they produce. It is this octane value of ethanol that in recent years has been a key factor in enabling ethanol to compete favorably with gasoline. Rarely has ethanol been cheaper than gasoline on an energy equivalent basis.[199] As a consequence, there is seldom a meaningful economic driver to produce and distribute E15 compared to E10, especially given the service station upgrade costs.

A final factor that presents a hurdle to E15 expansion is that E15 made at blender pumps often is done so inconsistently with EPA's regulatory requirements. As discussed in the proposal, E15 made at blender pumps is often made with certified E10 (or CBOB) and E85 (made with denatured fuel ethanol and uncertified hydrocarbon blendstocks, *i.e.,* natural gas liquids).[200] While data is limited, we believe that approximately 50 percent of stations offering E15 make E15 in this manner. The potential to violate EPA's regulatory requirements has resulted in many parties choosing not to offer E15 until EPA provides a legal pathway to make E15 at blender pumps. As mentioned in the proposal, we had previously proposed requirements on E85 used to make E15 at blender pumps that would both assure that the E15 met EPA's fuel quality standards and provide a cost-effective compliance mechanism for the retailers operating blender pumps to demonstrate compliance.[201] Since we have not finalized those requirements or addressed the technical challenges raised in public comments, we expect regulatory uncertainty regarding E15 made at blender pumps to further inhibit E15 expansion.

As another example of these hurdles, E15 has not expanded significantly into RFG areas, where the RVP of E15 has not been limited by the 1-psi waiver. RFG represents over 30 percent of the gasoline in the United States and refiners of RFG must comply with the summertime RFG VOC performance standards, which effectively require refiners to account for the increase in RVP that results from adding ethanol into RFG. The result of this is that oxygenate blenders have been able to produce E15 using the same RBOB as E10 in the summer since EPA granted the first E15 waiver 9 years ago. However, according to the E15 compliance and RFG surveys, only five RFG areas (Chicago, Milwaukee, St. Louis, Washington DC, and Dallas) out of 26 RFG areas have had any E15 marketed in those areas and even in those areas, E15 has only been offered in a limited number of stations.[202] We

available at *https://ethanolrfa.org/wp-content/uploads/2015/09/Informa_Potential_Use_of_Biofuels_toward_RFS_20141.pdf.*

[196] For example, the State of Iowa provides biofuels tax credits for E15, see *https://www.agmrc.org/renewable-energy/renewable-energy-climate-change-report/renewable-energy-climate-change-report/may-2017-report/overview-of-iowa-biofuel-tax-credits-and-ethanol-blends-sales-e10-e15-e20-and-e85.* Additionally, USDA provided grants under its Biofuel Infrastructure Partnership program; see *https://www.fsa.usda.gov/programs-and-services/energy-programs/bip/index.*

[197] In certain situations, such as limited USTs or pump infrastructure, retailers are unable to make both E10 and E15 available. In these situations, commenters suggested that retailers would chose to make E10 available rather than E15.

[198] See ''Head Like a Hole,'' available at *http://www.fuelsinstitute.org/Media/The-Commute/Head-Like-a-Hole.*

[199] Ethanol price data from USDA is available at *https://www.ers.usda.gov/data-products/us-bioenergy-statistics/us-bioenergy-statistics/#Prices.*

[200] See 84 FR 10595 (March 21, 2019).

[201] See 81 FR 80862–80864 (November 16, 2016).

[202] According to the RFG and E15 surveys, only 78 retail stations in RFG areas are registered to sell E15. This is out of 22,287 retail stations in all RFG areas or 0.35 percent of RFG stations. This is substantially lower than the national rate of around 1.13 percent of retail stations nationally. This difference in number, despite E15 not being limited by the 1-psi waiver in RFG areas in the summer, is likely a result of the factors discussed in this section. RFG areas tend to be in major metropolitan areas which may have higher costs to install retail infrastructure compatible with E15. This further

believe this lack of expansion of E15 in RFG areas is primarily a result of the various hurdles discussed in this section, and we expect similar results in conventional areas as a response to this action to allow the 1-psi waiver for E15.

Because this action does not change the rate of UST system and fuel dispenser turnover, increase consumer demand or acceptance for E15, ensure greater economic value for E15, or resolve the regulatory issues associated with producing E15 at blender pumps; we do not believe providing E15 the 1-psi waiver will result in a substantial expansion of E15 being offered at new retail locations.

Several commenters suggested that this action would result in significant impacts on air quality or have a significant economic impact. These commenters typically assume that every vehicle, engine, and piece of equipment in country will begin using E15 and that if the entire national fleet moved from E10 to E15 use substantial increases in regulated pollutants, widespread degradation of air quality, or necessitate billions of dollars of investments on the part of small businesses to offer E15 as a result. As previously mentioned, we do not expect that allowing E15 to receive the 1-psi waiver would result in widespread E15 use. This action does not require that any party make, distribute, sell, or use E15. As such, this action also does not address the hurdles to entry of E15. Based on the experience of E15 in areas that can already use E15 year-round (*i.e.,* RFG areas), it is unlikely that providing the 1-psi waiver to E15 would lead to a substantial increase in E15 use as a result of this action.

F. E15 Criteria Pollutant and Air Toxics Emission Impacts

As discussed above, we expect the emissions of E15 at 9 psi RVP to be substantially similar to those of E10 Tier 3 certification fuel when used in Tier 3 light-duty vehicles. This section describes the expected change in in-use emissions resulting from this action, assessing the evaporative and exhaust emissions of E15 with the 1-psi RVP waiver relative to the E10 with the 1-psi RVP waiver already available in the marketplace nationwide. While we attempt to estimate the emissions effects of E15 relative to E10 on a per-vehicle basis, we do not attempt to quantify what these changes mean for air quality in any specific area or the nation as a whole. We do not believe that as a result of this rulemaking a significant number of additional retail stations will offer E15, due to several hurdles described in Section II.E. As such, it would be difficult to quantify any effects (positive or negative) with confidence associated with providing E15 the 1-psi waiver. Such effects, if quantified, are unlikely to affect ambient air quality beyond the margin of error in air quality modeling. In Section II.C.6 we present estimated changes in emissions on a per-vehicle basis for illustrative purposes.

Evaporative emissions from vehicles comprise approximately 60 percent of the VOC emissions during summertime conditions from the current vehicle fleet based on results produced by MOVES2014b, and such VOC emissions contribute to ambient levels of ozone, PM, and air toxics, all of which adversely affect public health and welfare. Today's vehicles are equipped with charcoal cannisters to capture vapors generated during refueling as well as daily diurnal temperature fluctuations. This stored vapor is then drawn into the engine and combusted during vehicle operation.

Currently and historically, vehicle manufacturers have been required to certify their vehicles on test gasoline with a volatility of 9.0 psi RVP under severe operating conditions similar to what might be expected on days with high ozone concentration. The evaporative emission standards have been made more stringent over time, such that the Tier 3 standards require essentially zero vapor loss during normal operation on 9.0-psi fuel. Increasing fuel RVP from 9.0 psi to 10.0 psi increases fuel vapor generation significantly under summertime conditions, which can overwhelm a vehicle's evaporative control system and push it out of compliance. Consequently, controlling the volatility of gasoline during the summer is important in order to control the evaporative VOC emissions from vehicles and engines in-use.

This action extends the 1-psi RVP waiver to E15, allowing its in-use volatility to go from 9.0 psi to 10.0 psi RVP. Viewing this change in isolation, one might expect a significant increase in in-use evaporative emissions, and some public comments raised this concern. To accurately assess emission impacts in this case, however, we need to examine current real-world circumstances. Namely, we expect any additional E15 introduced into the market to displace E10 that is being sold and that already carries the 1-psi waiver in CG areas (E10 has nearly 100 percent market share for gasoline sold in the U.S.). Thus, any increase in in-use emissions that might have resulted from the 1-psi waiver applying to E15 is already occurring with E10. Rather, displacement of E10 with E15 is expected to lower the RVP of in-use gasoline by as much as 0.1 psi when made from the same RBOB or CBOB.[203] We believe this will continue to be the case until E15 use becomes widespread.[204]

Use of E15 will also have other criteria pollutant emission impacts beyond those related to volatility as described above. Assuming E15 is made from the same RBOB or CBOB as E10, we expect the additional 5 volume percent ethanol to further dilute hydrocarbon fuel components such as aromatics, producing changes in several exhaust emissions such as NO_X, NMOG, and benzene.[205] [206] Ethanol also causes changes in the volatility profile of the blended fuel, typically lowering the mid-point distillation temperature (T50) significantly, and the 90 percent temperature (T90) slightly.[207] Table II.F–1 shows predicted fuel property and exhaust emission changes for Tier 2 vehicles using both E10 certification gasoline and a typical market E10 as baselines for comparison. Results using the EPAct model developed from the EPAct/V2/E–89 study described in Section II.C.6.a suggest E15 are expected to produce slightly lower CO and benzene, and slightly higher NO_X and PM compared to their E10 blending base. Changes in total NMOG (or VOC) vary in direction depending on the T50 of the blending base.

illustrates how some of the hurdles to E15 introduction will not be addressed by providing E15 with the 1-psi waiver.

[203] ''Determination of the Potential Property Ranges of Mid-Level Ethanol Blends.'' American Petroleum Institute, Washington, DC. April 2010.

[204] We believe it would be unlikely for refiners to produce an E15 CBOB for such a small difference in RVP (*i.e.,* 0.1 psi RVP). However, refiners may want to create a CBOB with a slightly lower octane level to account for the increased octane from the additional ethanol in E15 versus E10. We believe this would only occur if E15 comprised a large part of a conventional gasoline area's market; something that took decades to happen with E10.

[205] For the effects of sulfur on emissions see Table ES–3 in ''The Effects of Ultra-Low Sulfur Gasoline on Emissions from Tier 2 Vehicles in the In-Use Fleet.'' US EPA Office of Transportation and Air Quality, Ann Arbor MI. EPA–420–R–14–002, March 2014.

[206] For the effects of ethanol and aromatics on emissions see Tables ES–1 through ES–4 in ''Assessing the Effect of Five Gasoline Properties on Exhaust Emissions from Light-Duty Vehicles Certified to Tier 2 Standards: Analysis of Data from EPAct Phase 3 (EPAct/V2/E–89): Final Report.'' US EPA Office of Transportation and Air Quality, Ann Arbor MI. EPA–420–R–13–002, March 2013.

[207] ''Determination of the Potential Property Ranges of Mid-Level Ethanol Blends.'' American Petroleum Institute, Washington, DC. April 2010.

TABLE II.F–1—EXAMPLE EXHAUST EMISSION IMPACTS OF E15 BASED ON EPACT MODEL

	Fuel properties used in analysis					E15 emissions impact relative to shaded baseline row above				
	Eth. (vol%)	Arom. (vol%)	RVP (psi)	T50 (°F)	T90 (°F)	CO (percent)	NMOG (percent)	NO_X (percent)	PM (percent)	Benzene [b] (percent)
Baseline: E10 certification fuel at 9 psi	10.0	23.0	9.0	200	325	Baseline for comparison				
E15 at 9 psi (splash blend with baseline)	15.0	21.9	9.0	163	321	−2.4	−5.5	1.9	2.8	−10.9
E15 at 10 psi (splash blend with baseline)	15.0	21.9	10.0	163	321	−1.3	−8.0	1.9	2.8	−10.9
Baseline: E10 market fuel at 10 psi	10.0	23.0	10.0	180	320	Baseline for comparison				
E15 at 10 psi (splash blend with baseline)	15.0	21.9	10.0	160	316	−1.9	2.2	2.5	4.1	−8.2
E15 at 10 psi (match blend per MOVES Fuel Wizard) [a]	15.0	21.7	10.0	167	318	−2.6	1.4	2.7	4.1	−7.7

[a] The MOVES Fuel Wizard attempts to estimate how properties would change in a widespread blending scenario.
[b] The benzene effect shown is for a cold-start driving mode representing the first few minutes of vehicle operation. Other emission effects shown represent a typical mix of cold-start and warmed-up driving.

If E15 use becomes widespread in the longer term, refiners may adjust the base blendstock to accommodate the additional ethanol. During the rapid expansion of E10 blending between 2007–2012, aromatics levels were observed to decline by a few volume percent while pump octane levels stayed constant, and octane match-blending is understood to have been a contributing factor.[208] [209] For other fuel properties, such as sulfur and benzene content, refiner control could be relaxed slightly for E15 blendstocks with the finished market E15 still meeting with the regulatory limits. E15 made with such match blends would then have slightly different emission impacts compared to the splash blends made with E10 blendstocks expected for the near term as shown in Table II.F–1.

Several commenters highlighted the alleged benefits or disbenefits of E15 use on regulated emissions and air quality. These commenters often assumed that entire areas or the entire national fleet of vehicles and engines would switch from using E10 to E15 as a result of this action. While it is possible that measurable emissions and air quality effects could occur due to the small estimated per vehicle changes in exhaust and evaporative emission if the entire vehicle and engine fleet of an area or the nation went from using E10 to E15, such an analysis is inappropriate for this rulemaking. As discussed in Section II.E, we do not believe that E15 use will expand more quickly than it currently is expanding as a result of this rulemaking. E15 has been a legal fuel for use in the marketplace since 2010, and as discussed in Section II.A.2, it is still sold in limited quantities at only about one percent of retail stations nationwide. This rulemaking does not address the other hurdles to E15 entering the marketplace and does not provide additional incentives to parties that wish to make, distribute, or sell E15 to accelerate E15 use. As discussed in Section II.A.2, this situation is analogous to the situation when E10 was granted the 1-psi waiver in 1990, and the market saw little response in ethanol use until the mid-2000s when MTBE was banned, the price of crude oil rose making ethanol cost competitive with gasoline, and the RFS was created by the Energy Policy Act of 2005. As such, we believe that it would be inappropriate to attribute any meaningful environmental impacts (positive or negative) to increased E15 use as a result of this rulemaking.

G. E15 Economic Impacts

Due to the barriers to market entry discussed in Section II.E, we anticipate that the economic impacts of providing E15 with the 1-psi waiver will be small. This section briefly describes the potential benefits and costs of providing E15 with the 1-psi waiver. To the extent there would be small impacts from this rulemaking on the volume of ethanol use, the appropriate place to reflect those impacts would be in rulemaking actions associated with implementation of the renewable fuels program, where EPA considers the impacts of changes in biofuel volumes.

1. Potential Benefits of This Action

We anticipate that providing the flexibility to use E15 at 10.0 psi RVP in the summer could help incentivize some retailers to introduce E15 into the marketplace, but that such incentives may be outweighed by the other hurdles to widespread E15 use. In situations where denatured fuel ethanol might be cheaper than gasoline, such as in the Midwest where distribution costs are low, parties may elect to make E15 more widely available, which may result in a modest decrease in fuel prices at the pump. However, even then this may not be sufficient to overcome the significant investment needed to upgrade an existing retail station to be compatible with E15 if consumer demand for E15 remains low. Any additional ethanol that is blended as a result of this action could help to offset a portion of the projected decline in U.S. ethanol use due to projected declining gasoline consumption. This in turn could provide energy security benefits.

2. Costs of This Action

Finalizing the 1-psi waiver for E15 in the summer may help open new market opportunities for E15. However, fuel manufacturers and distributors of E15 would not be compelled to make or offer

[208] See Figure 3–4 of the Regulatory Impact Analysis for ''Control of Air Pollution from Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards.'' EPA–420–R–14–005, February 2014.

[209] See Figure 65 of ''Fuel Trends Report: Gasoline 2006–2016.'' EPA–420–R–17–005. October 2017.

E15 and could choose to offer E15 as dictated by market demands and individual business decisions.

Overall, we anticipate very little change in costs regarding the proposed regulatory provisions to allow E15 to receive the 1-psi waiver in the summer. This action places no new regulatory burdens on any party in the gasoline or denatured fuel ethanol distribution system and modifies, but does not remove, PTD requirements for E15. Hence, we expect that these proposed provisions would not substantially alter the cost of compliance for parties that produce and distribute E15.

III. RIN Market Reforms

A. Background

Under CAA sec. 211(o), EPA is required to set renewable fuel percentage standards every year.[210] To comply, obligated parties [211] can purchase and blend the requisite volumes of renewable fuels into the petroleum-derived transportation fuels they produce or import. However, to allow the market to function more efficiently, to avoid market disruption, and to assist obligated parties in meeting their individual RVOs, Congress directed EPA to establish, through a transparent public rulemaking process, a system for the generation and use of renewable fuel program credits.[212] The credits created under this program are known as RINs. RINs are credits that are generated upon production of qualifying renewable fuel and ultimately used by obligated parties to demonstrate compliance with their RVOs.[213] Renewable fuel producers and importers generate and assign RINs to the renewable fuel they produce or import. These RINs are then transferred with the renewable fuel to the downstream parties that blend the renewable fuel into transportation fuel. In lieu of blending the renewable fuel themselves to demonstrate compliance, obligated parties have the option to instead purchase RINs from other parties that blend renewable fuel.

RIN prices are a function of multiple factors, including but not limited to changes in petroleum prices, agricultural feedstock (*e.g.,* corn, soy) prices, and expectations of future market shifts and standards. RIN prices may also fluctuate as the market responds to RFS standards and expectations of future EPA policy decisions. While there are many different factors that affect RIN prices, a review of the historical RIN price data demonstrates that RIN prices generally follow expected market principles.[214]

Obligated parties that purchased RINs on the market for compliance in 2013 saw their D6 RIN prices substantially increase from the year prior.[215] Though this increase in D6 RIN prices was the result of changes in the market, the most significant of which was reaching the E10 blendwall,[216] increasing D6 RIN prices did raise concerns regarding whether market manipulation played some role in elevated prices. In comments to proposed EPA rulemakings (such as the 2018 and 2019 RVO proposals) and via other communication with EPA staff, some stakeholders described conditions that they believed make the RIN market vulnerable to anti-competitive behavior. For example, commenters described a thin market volume, opaque price signals, and inelastic demand and supply curves and provided specific examples of behavior they believed to be manipulative, such as phantom RIN offers that suddenly vanish and reappear at higher prices after a party attempts to buy them at the purported asking price.[217] These stakeholders also believed that, as a result of market conditions and price volatility, anti-competitive behavior is taking place. For example, commenters argued that a small number of sophisticated market participants control a large number of ''surplus'' RINs that they hoard to drive up prices, at which point they can sell the RINs to realize a higher profit.

We take these claims of market manipulation seriously and took formal action prior to the notice of proposed rulemaking (NPRM) to investigate claims of manipulation. In March 2016, EPA entered into a Memorandum of Understanding (MOU) with the Commodity Futures Trading Commission (CFTC).[218] Under the MOU, we provided CFTC with certain RIN data for analysis in order to facilitate an EPA investigation. We still have not seen data-based evidence of RIN market manipulation, but the potential for such behavior remains a concern.

In the 2018 and 2019 RVO NPRMs, we broadly sought input on potential regulatory changes related to RIN trading as well as on ways to increase program transparency.[219] We received many comments to the 2019 RVO NPRM in support of publicly posting more RFS program data. In response, in September 2018, we began publishing weekly aggregated RIN prices and transaction volumes. We also received a wide variety of comments regarding the other ideas we put forward, including requiring public disclosure if a party holds a certain percentage of the RIN market and prohibiting non-obligated parties from purchasing separated RINs. Some comments expressed support for these ideas and offered other ideas. Other comments opposed both the specific reform proposals and the general concept of interfering with the open RIN market in any way.

On October 11, 2018, the President issued a White House statement directing EPA to initiate a rulemaking to address RIN price manipulation claims and increase transparency in the RIN market. Specifically, the memorandum directed EPA to consider potential reforms to the RIN regulations, including but not limited to the following proposals:

- Prohibiting entities other than obligated parties from purchasing separated RINs.
- Requiring public disclosure when RIN holdings held by an individual actor exceed specified limits.
- Limiting the length of time a non-obligated party can hold RINs.
- Requiring the retirement of RINs for the purpose of compliance be made in real time.

Pursuant to this directive, we proposed regulatory changes reflecting all four reforms identified in the President's Directive and requested comments on both the positive and negative consequences of each reform. For each reform proposal, we evaluated

[210] See, *e.g.,* 2019 RVO final rule (83 FR 63704, December 11, 2018).

[211] Obligated parties are refiners and importers of gasoline and diesel fuel. See 40 CFR 80.1406.

[212] See CAA sec. 211(o)(5).

[213] D3 and D7 RINs are used for the cellulosic biofuel RVO, D4 RINs are used for the biomass-based diesel RVO, D5 RINs are used for the advanced biofuel RVO, and D6 RINs are used for conventional renewable fuel RVO.

[214] For a thorough review of historical RIN price data, see Section III.B of the NPRM preamble (84 FR 10605–10607, March 21, 2019) and the memorandum, ''RIN Market Assessment,'' available in the docket for this action. Our assessment of RIN price behavior and the rationale behind it remains the same. See also the RTC document for a response to comment related to RIN price behavior.

[215] See the memorandum, ''RIN Market Assessment,'' available in the docket for this action.

[216] The E10 blendwall occurred when the implied conventional biofuel volume of ethanol established by the RFS program exceeded the volume of ethanol that could be blended into gasoline at a rate of up to 10 percent.

[217] See, *e.g.,* comments from Monroe Energy (Docket Item No. EPA–HQ–OAR–2018–0167–0622).

[218] See ''Memorandum of Understanding Between the Environmental Protection Agency and the Commodity Futures Trading Commission on the Sharing of Information Available to EPA Related to the Functioning of Renewable Fuel and Related Markets'' (2016), available at *https://www.epa.gov/sites/production/files/2016-03/documents/epa-cftc-mou-2016-03-16.pdf.*

[219] See 82 FR 34206 (July 21, 2017) and 83 FR 32024 (July 10, 2018).

comments already submitted to EPA describing its advantages and disadvantages. We also evaluated how a reform could be designed and implemented, whether a reform could be gamed or have unintended consequences, and what potential burden and cost it could place on regulated parties and on EPA. In the same action, we also proposed a fifth reform of enhancing EPA's market monitoring capabilities by imposing new recordkeeping and reporting requirements to collect more comprehensive data on RIN market transactions and participants and by hiring a third party with market monitoring expertise to conduct market analysis.

When we originally contemplated the reforms, we understood that restrictions could affect the flexibility and liquidity that the RIN system and regulations were designed to maximize. For example, numerous comments received on the 2019 RVO NPRM stated that changes to the RIN market structure could reduce liquidity, increase volatility, and make the RIN market function less efficiently, increasing costs to obligated parties and consumers. Interested stakeholders also suggested that some reforms could affect the ability of small, less recognized, or new renewable fuel producers and blenders to enter the market. Finally, we understood that some reforms could inadvertently affect otherwise legitimate market behavior. For example, parties that purchase RINs on the expectation that RIN prices will increase may provide an important price signal and increase market liquidity with their actions. Therefore, when we proposed the reforms, we took into consideration the potential for the reforms to harm the RIN market and communicated our intent to finalize the reforms that we concluded most likely to be beneficial for the RFS program, the RIN market, and the RFS stakeholders, and that do not impose unnecessary burden or cause unintended consequences.

After evaluating the comments received on the proposal, we have decided to finalize two of the proposed five reforms: Public disclosure requirements when a party's separated D6 RIN holdings exceed specified thresholds (Reform 1) and reporting and recordkeeping requirements to enhance EPA's market monitoring capabilities (Reform 5). We have decided to continue to collect and evaluate data and not to take final action at this time with regard to the other three of the five reforms that we proposed related to: RIN retirement compliance frequency (Reform 2), which parties can purchase RINs (Reform 3), and how long non-obligated parties can hold D6 RINs (Reform 4). In Section III.B, we discuss our overall rationale for finalizing only a subset of proposed reforms and our general response to market manipulation concerns. In Section III.C, we discuss the elements we are finalizing related to Reform 1. In Section III.D, we discuss the elements we are finalized related to Reform 5. In Section III.E, we discuss the rationale behind not taking final action at this time with respect to proposed Reforms 2, 3, and 4, and the steps we intend to pursue related to these reforms in the future.

B. Market Manipulation

Price manipulation through anti-competitive behavior, similar to what is referred to as cornering or squeezing the market, and false or misleading representations in transactions, is antithetical to effective market operation.[220] Were such anti-competitive behavior to occur, it could undermine the confidence of market participants in the RIN market and undermine the RFS program itself. However, as stated in the proposal and reaffirmed in this action, we have conducted and reviewed analyses using non-public, individual-level data and have found no data-based evidence such anti-competitive behavior occurring between market participants.

First, prior to the NPRM, we took formal action to investigate claims of manipulation by entering into an MOU with CFTC and providing them with certain RIN data for analysis in order to facilitate an EPA investigation.

Second, during the development of the NPRM, we conducted a screening analysis using individual-level RIN holding data to evaluate historical market shares. We found that the maximum level of D6 RINs that any one party held at a time was between 10 and 14 percent of all D6 RINs.[221] These figures are commensurate with the gasoline and diesel production market share of the largest refiners, which suggested to us that they were likely appropriate holding levels. We also compared each obligated party's D6 RIN holdings to 130 percent of their implied conventional biofuel RVO.[222] We chose 130 percent because it allows for holdings of 100 percent of their implied conventional biofuel RVO, 20 percent for banking toward the next year's RVO, and 10 percent for additional flexibility and uncertainty. We found that only three obligated parties would have exceeded the 130-percent value at least once in the 2018 compliance year.[223] We were unable to fully aggregate holdings and RVOs by corporate affiliates or account for RINs that an obligated party was holding for a small refinery with an exemption approval from EPA. We were also unable to account for refinery sales, acquisitions, or shutdowns in the year used to calculate RVOs. After reviewing these three companies more closely, taking into consideration the information we were unable to account for in the original screening analysis, we did not identify any instances of excessive holdings or manipulative behavior.

Third, since publishing the NPRM, we conducted additional analysis on the distribution of D6 RIN holdings across the marketplace. On three dates in the 2017 compliance year, chosen because they are representative of seasonal RIN market activity, we evaluated each company's separated D6 RIN holdings beyond what was needed for compliance with the next RVO in the case of obligated parties.[224] On the three dates we examined, we found that ''excess'' D6 RINs (those RINs in excess of individual RVOs) were available from between 114 and 145 parties, with no single party holding more than 14

[220] Such behaviors may also violate the anti-fraud and anti-manipulation provisions of the Commodity Exchange Act. See, *e.g.,* Section 9(a)(2) of the CEA, 7 U.S.C. 13(a)(2) (2012), which states that it is a felony for ''Any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce . . . or to corner or attempt to corner any such commodity or knowingly to deliver or cause to be delivered for transmission through the mails or interstate commerce by telegraph, telephone, wireless, or other means of communication false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of any commodity in interstate commerce.'' Section 6(c)(1) of the CEA, 7 U.S.C. 9(1) (2012), titled Prohibition against manipulation, states that ''it shall be unlawful for any person, directly or indirectly, to use or employ, or attempt to use or employ, in connection with . . . a contract of sale of any commodity in interstate commerce . . . any manipulative or deceptive device or contrivance. . . .''

[221] The full analysis is detailed in the memorandum, ''Daily Comparison of Individual RIN Holdings to Total Available RINs,'' available in the docket for this action.

[222] We only looked at obligated parties whose separated D6 RIN holdings exceeded 450 million at least once in compliance year 2017.

[223] We aggregated all facilities by their company ID in EMTS to get a company total for both RIN holdings and thresholds. See calculations in the memorandum, ''Threshold Calculations for D6 RIN Holding Parties,'' available in the docket for this action.

[224] The full analysis is detailed in the memorandum, ''Percentage of D6 RINs Held by a Single Party,'' available in the docket for this action.

percent of all ''excess'' D6 RINs. See Table III.B–1 for the results of this analysis.

Table III.B–1 for the results of this analysis.

TABLE III.B–1—PERCENTAGE OF ALL D6 RINS HELD BY A SINGLE PARTY

Range of ''Excess'' D6 RINs (percent)	Number of parties in the range		
	10/1/17	12/1/17	3/1/18
8–14	2	3	2
5–8	3	1	4
3–5	3	4	1
2–3	5	4	6
1–2	11	10	10
<1	119	123	91
<14	143	145	114

From this analysis, we conclude that ''excess'' RIN holdings are spread across a large number of parties and that no single party controls an excessive share of the market. In addition, many commenters stated that they have never encountered manipulative behavior in the RIN market and disagree with the concerns that manipulation is occurring or has occurred. For example, a group of associations whose members represent approximately 90 percent of retail sales of motor fuel in the U.S. indicated that none of its constituent associations' members have seen any transactional problems with the current RIN trading structure. Several commenters stated that the reforms EPA proposed are, effectively, a ''solution in search of a problem.''

We understand that some parties remain concerned about potential market manipulation. Among the comments received on this action, some describe scenarios that appear to the commenter to have been driven by manipulative behavior. Upon examination, however, at least some of these scenarios could be caused by legitimate, non-manipulative market behavior. For example, one commenter describes entering into a forward purchase contract with a counterparty at a price indexed to the future RIN price. The commenter observes the counterparty purchase RINs on the spot market at what they believe are artificially high prices to ''drive up'' the future index price. We note, however, that a party would need to control an excessive share of the RIN market in order to exercise such undue influence on the spot price, and we have found through our analysis that no party has such market share. We find that the RIN spot price in this case could be rising naturally, consistent with market fundamentals. Furthermore, these comments do not contain details of any dates, prices, transaction volumes, or parties involved, so we cannot evaluate them further.

Another commenter compares RIN market data with data from the ethanol, oil, and natural gas markets and presents analytic findings about market inefficiency, such as price volatility, and claim that the results correlate to market manipulation. As explained further in the Response to Comments (RTC) document,[225] these market analyses identify no actual instances of manipulative behavior and merely suggest that market manipulation is a risk because of how the market is designed and functions. On the whole, we do not find these comments or analytic findings to be compelling evidence demonstrating that market manipulation has occurred. We believe that other factors unrelated to market manipulation are more likely to have caused the market dynamics observed by the commenter. For example, as explained in detail in the NPRM, our analysis indicates that RIN price volatility can be largely attributed to market responses to RFS standards and expectations of future EPA policy decisions.[226] Several commenters provided evidence in support of this conclusion. In addition, we do not believe that comparing the liquidity of the RIN market to the liquidity of the ethanol, oil, and natural gas markets is appropriate. As one commenter notes, the RIN market is significantly smaller in size than those markets, which would naturally make it less liquid than a larger market because of the fewer number of parties available to transact with one another. We also note that traditional liquidity measures do not account for the fact that obligated parties must accumulate RINs to comply with regulatory requirements, which is not true in other markets.

Given all of these factors, we have decided that the most appropriate action at this time is to collect more data and conduct additional, enhanced market monitoring and analysis. We do not find that the concerns and analytic findings raised to EPA to date warrant restructuring the RIN market at this time. We do not agree with comments that we should at this time restrict elements of the RIN market, such as who can participate in the market and how long parties can hold RINs, since we have seen no data-based evidence that anti-competitive behavior has occurred. We conclude that such restrictions could adversely impact liquidity and other market functions and would only be warranted if additional monitoring identified anti-competitive behavior that could be managed with such market-wide restrictions. As such, we agree with comments that the RIN market should be allowed to continue operating at this time without additional restrictions while concerns related to anti-competitive behavior should be studied more closely.

Therefore, in this action, we are only finalizing the two reforms (*i.e.,* Reforms 1 and 5) that we believe will enhance our data collection and market monitoring capabilities. We are not taking final action at this time with regard to the other three proposed reforms. We intend to continue to study whether such reforms could benefit the market or, conversely, could have unintended negative consequences.

C. Reform 1: Public Disclosure If RIN Holdings Exceed Certain Threshold

We proposed a requirement for public disclosure when a party's RIN holdings

[225] The RTC document is available in the docket for this action.

[226] For a thorough review of historical RIN price data, see Section III.B of the NPRM preamble (84 FR 10605–10607, March 21, 2019) and the memorandum, ''RIN Market Assessment,'' available in the docket for this action. Our assessment of RIN price behavior and the rationale behind it remains the same. See also the RTC document for a response to comment related to RIN price behavior.

exceed a certain threshold. The fundamental concept underpinning this reform is that increased transparency can help deter market actors from amassing an excess of separated RINs, which due to the concentration in ownership of available supplies could result in undue influence or market power. This reform could also provide information to market participants about the underlying status of the market. A concentration of separated RINs, if sufficiently large in scope, could be used by a party to manipulate the market by artificially affecting prices in any direction. The most extreme examples of market power are monopolies, but concentration can be a concern even for markets with many participants when only a few control the majority of available supply at any given point in time.

In this action, we are largely finalizing what we proposed for Reform 1, of which public comment was broadly supportive. We are finalizing two thresholds that work in tandem to identify parties that have amassed RINs in excess of normal business practices, which could indicate an intent to assert an inappropriate influence on the market. Under the threshold reform finalized in this action, a RIN-holding party must aggregate its end-of-day separated D6 RIN holdings with those of its corporate affiliates. If the group of affiliates holds aggregated separated D6 RINs on any day in excess of the primary threshold and contains no obligated party, then the group triggers the primary threshold, and each party in the affiliate group must notify EPA of a threshold exceedance at the end of the quarter. If the group of affiliates holds separated D6 RINs in excess of the primary threshold on any day and contains at least one obligated party, then the aggregated RIN holdings are compared to the secondary threshold. If they exceed both the primary and the secondary thresholds, each member in the affiliate group must notify EPA of a threshold exceedance at the end of the quarter. For an affiliated group containing an obligated party that triggers the primary but not the secondary threshold, no notification to EPA is required by the group members.

In this action, we are finalizing a requirement for public disclosure when parties exceed the EPA-set RIN-holding threshold. We are finalizing our proposal in the NPRM that no confidentiality claims may be asserted by any person with respect to the name of a party that reported exceeding an EPA-set RIN holding threshold. Some commenters indicated that releasing a party's name could alert other market participants that the party has a large supply of excess RINs, which could weaken their ability to negotiate RIN price for a transaction. After reviewing these comments and reconsidering the conditions leading up to potential public disclosure, we find that a party concerned about triggering the reporting threshold can keep its RIN holdings at a level such that the public disclosure requirement is not triggered. We believe that the thresholds signify an amount of RINs in excess of normal business practices and will not interfere with RIN holdings that are necessary to reasonably manage compliance with the RFS program. Given the amount of notice we are giving parties, we find any party that chooses after January 1, 2020, to acquire RINs in excess of the thresholds is itself causing an alert to market participants about their RIN holdings and is directly responsible itself for any competitive harm, such as depressed RIN prices, that results. Therefore, no claim of business confidentiality may be asserted by any person with respect to the name of a party that exceeds a RIN holding threshold.

We also received comment in support of a prohibitive limit with a potential enforcement consequence if the threshold were exceeded rather than simply relying on public disclosure as a deterrent to inappropriate market behavior. These commenters worried that public disclosure would have no effect on RIN holdings and that a prohibition would be necessary to affect behavior. We disagree with these comments. Furthermore, we decided that a prohibitive limit could have detrimental effects, especially if not designed properly. Excess market power is very difficult to quantify in any given market, even if regulators have perfect knowledge of all market conditions. A real risk exists of setting a RIN holding threshold in this rulemaking incorrectly. If a threshold is set too low, it could unnecessarily compromise market efficiency and liquidity and interfere with obligated parties' ability to comply with regulations by disincentivizing them from holding the necessary quantity of RINs to meet their RVO. We therefore believe that a threshold with a consequence of public disclosure is appropriate rather than a holding limit with an enforcement consequence. A threshold serves as a deterrent and warning bell without the risk of causing unnecessary harm. We also believe that, in the face of insufficient evidence of any identified parties currently exhibiting what might be considered excessive market power, public disclosure is an appropriate first action.

Under this reform, we are applying the thresholds to D6 RIN holdings only. After considering comments, we conclude that we can limit the scope of this reform to D6 RINs without compromising its intended effect. First, D6 RINs raise the most stakeholder concern because the price of D6 RINs is expected to vary greatly with very low prices for D6 RINs when the implied RFS requirement for conventional biofuel is below the blendwall to the high prices seen in previous years when the implied RFS requirement for conventional biofuel is above the blendwall. Under this unique set of conditions, the D6 RIN market would present a better opportunity than other D-codes were a party to attempt to drive up RIN prices by withholding large amounts of RINs. Conversely, were a party to withhold a large volume of D4 RINs, additional supplies of D4 RINs could enter the market to meet demand at a marginal increase in price. Second, the nested nature of the RVOs and the unique characteristics of other RIN markets (*e.g.,* D3) would make covering all RIN categories considerably more complicated. We are further limiting this measure to separated RINs because we believe the physical storage limitations faced by renewable fuel already reduce the opportunity for price manipulation of assigned RINs and that the existing regulations at 40 CFR 80.1428 already include anti-hoarding provisions for RINs attached to renewable fuel.

We are finalizing a primary threshold of three percent of the total implied conventional biofuel volume requirement set for that year by EPA in the RVO rule, which is the total renewable fuel volume requirement minus the advanced fuel volume requirement (*e.g.,* the primary threshold would have been three percent of 15 billion gallons for compliance year 2018). When we were contemplating this reform for the NPRM, we looked at the linked cap-and-trade programs implemented by California and Quebec as examples. They use a formula that calculates a holding limit of about three percent of their combined annual allowance budgets every year. We received comments that a three percent threshold is appropriate, and several commenters stated that it is too low. We continue to believe that it is low enough to identify parties that have acquired RIN holdings larger than necessary for normal business operations and that may indicate an effort to assert inappropriate market power. On the other hand, given the comments that a

RIN holding threshold set too low could discourage blending and cause harm to parties, we continue to believe that going any lower than three percent would be unwarranted.

We are finalizing a secondary threshold for obligated parties of 130 percent of the individual implied conventional RVOs of all obligated parties in the affiliate group. As stated in comments, we recognize that larger obligated parties with large RVOs have valid reasons to accumulate and hold a volume of RINs that might exceed the primary threshold, not only to meet their next annual compliance obligation but also to bank additional RINs for compliance with the following year's obligation. Therefore, we recognize that the secondary threshold has to account for and allow RINs held to meet compliance obligations. We chose 130 percent because it allows for holdings of 100 percent of their implied conventional biofuel RVO, 20 percent for banking, and 10 percent for additional flexibility and uncertainty. After considering comments, we believe that this 10 percent flexibility is important because it could, for example, cover potentially invalid D6 RINs that may not be sold or retired according to the existing RFS regulations or small changes to gasoline and diesel production and import volumes from one year to another that affect the RIN holding calculations.

We are finalizing an approach to calculating the primary and secondary thresholds that adjusts depending on how many RVOs are in effect.[227] For anytime between April 1 and December 31, when only one set of annual RVOs is in effect, the primary threshold will equal three percent of the annual implied conventional biofuel volume requirement established by EPA in a rule promulgated each year to set the annual renewable fuel standards. In a hypothetical example, this would amount to three percent of 15 billion D6 RINs, or 450 million D6 RINs. In that same period, an obligated party would calculate its secondary threshold by multiplying its gasoline and diesel production and import volume from the prior year by the difference between the obligated party's renewable fuel percentage standard from the prior year and the advanced fuel percentage standard from the prior year and account for any deficit volume it carried over from the prior year. For anytime between January 1 and March 31, when two sets of annual RVOs are in effect, the primary threshold will be three percent of 125 percent of the annual implied conventional biofuel volume requirement. In our hypothetical example, this would amount to three percent of 18.75 billion D6 RINs, or 562.5 million D6 RINs. In that same period, the secondary threshold would be calculated using the obligated party's gasoline and diesel production and import volume from the prior year multiplied by 125 percent of the obligated party's difference between the renewable fuel percentage standard from the prior year and the advanced fuel percentage standard from the prior year and account for any deficit volume it carried over from the prior year. The threshold in the first quarter of the year is 125 percent of the other months because parties may need to hold RINs for two overlapping RVOs in that quarter rather than just one.

Under this reform, two parties are corporate affiliates if one party has more than 20-percent ownership in the other or if both parties are owned more than 20 percent by the same parent company. We chose this ''more than 20'' percent ownership level because it is consistent with the value that the California Cap-and-Trade Program [228] uses to define indirect corporate association and with the value that the Regional Greenhouse Gas Initiative (RGGI) program [229] uses to define corporate association. Those programs are useful points of comparison because they also implement environmental credit programs and monitor their credit markets for anti-competitive behavior. We received no comments on the 20 percent value or providing suggestions for a different value. Only corporate affiliates registered to own RINs in the EPA Moderated Transaction System (EMTS) [230] are included in the RIN holding aggregation. Corporate affiliates that are not registered in EMTS do not need to be included in the threshold calculations as these affiliates cannot hold RINs.

We are finalizing the requirement that each RIN-holding party compare the daily aggregated RIN holdings of its affiliate group with the primary threshold and, if applicable, the secondary threshold. If the relevant threshold is exceeded on any day in the quarter, the affiliate group parties must report the exceedance in their next RIN Activity Report. To be clear, the parties may conduct the required comparison of daily RIN holdings to the thresholds as infrequently as quarterly to comply with the requirements. For example, a party may proceed by noting its separated D6 RIN holdings at the beginning of the quarter then keeping track throughout the quarter of the volume and date of every RIN purchase and sale, as already required under the RFS recordkeeping provisions at 40 CFR 80.1454(i). At the end of the quarter, the party would then compute what the RIN holdings were on each day of the quarter and aggregate those daily numbers with those of its affiliates. On the other hand, parties may choose to conduct the comparison more frequently, such as monthly, weekly, or daily. For example, a party with large RIN holdings that conducts transactions often throughout the month may wish to aggregate its daily RIN holdings with those of its affiliate group members frequently to know when aggregated levels are approaching the relevant threshold and when action might be needed to avoid exceeding the threshold on an upcoming day. After considering comments, we believe that quarterly reporting is an adequate frequency for EPA and public notification of potentially-concerning market power while also appropriately minimizing the calculation burden on parties that feel they are at very low risk of exceeding the relevant threshold.

We are adding a yes/no reporting requirement on exceeding the thresholds to the RIN Activity Report that all RIN-holding parties are already required to submit to EPA quarterly. A party will select ''no'' if the threshold is not exceeded during the given quarter or ''yes'' if it is exceeded at least once in the quarter. We will publish on a quarterly basis only the names of the parties that reported ''yes''. We are also adding a reporting requirement to the RIN Activity Report that RIN-holding parties submit to EPA on RIN-holding corporate affiliates and all contractual

[227] RFS regulations set the compliance deadline for each year at March 31 of the subsequent year. For example, the 2017 compliance deadline (*i.e.,* the deadline for retiring RINs based on 2017 volumes) was March 31, 2018. To continue with the example, in the period between January 1 and March 31, 2018, obligated parties were likely holding 2016 and/or 2017 RINs toward compliance with their 2017 obligations (on or before March 31, 2018) and were also beginning to collect and hold 2018 years toward comply with their 2018 obligations (on or before March 31, 2019). Therefore, during that three-month period, two RVOs are in place.

[228] More information on California's Cap and Trade program can be found at *https://www.arb.ca.gov/cc/capandtrade/capandtrade.htm.*

[229] The Regional Greenhouse Gas Initiative (RGGI) is a cooperative effort among the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont to cap and reduce CO_2 emissions from the power sector. More information on RGGI can be found at *https://www.rggi.org.*

[230] EMTS was designed to allow companies to report and track RIN transactions under the RFS program.

affiliates.[231] This affiliate information will not be published by EPA. We proposed that the names of these affiliates be reported in a list submitted to EPA by the attest auditor in June following the affected compliance year. Based on comments that annual reporting of affiliates is insufficient and should be required more frequently and on a more thorough assessment of our data system capabilities, we are putting the reporting requirements in the RIN Activity Report rather than the attest engagement report. We believe that RIN-holding corporate affiliate and all contractual affiliate names can help EPA confirm RIN holding calculations, compare aggregated RIN holdings to other threshold levels beyond those finalized in this action, and conduct market oversight. Therefore, we prefer to collect this affiliate information in a more useful format than a hard-coded list attached to an attest report. Furthermore, we want to collect this information as soon as possible while providing parties adequate time to prepare. Since the calculations and recordkeeping requirements will take effect on January 1, 2020, the first yes/no report on exceeding the threshold will be submitted by June 1, 2020, and the auditor findings of that report will be submitted to EPA by June 1, 2021. We prefer to receive the affiliate information by June 1, 2020, rather than in 2021. Therefore, for each quarterly RIN Activity Report submitted after January 1, 2020, each party must enter the names and EPA company IDs of each RIN-holding corporate affiliate and each contractual affiliate from that quarter, regardless of whether they also report exceeding the RIN holding threshold.

We are requiring that the reported contractual affiliates include those that do not own RINs and that are not registered with EPA to own RINs. For example, a party with a contract in place to purchase or hold RINs for a company not registered in EMTS would report that company's name to EPA. Based on comments received, we continue to believe we need a wider picture of contractual affiliations than those in EMTS so that we can maintain some insight into any additional market share over which parties might have control. For example, we will monitor for a non-registered party that has established contracts with multiple parties to purchase and hold a large number of aggregated RINs on its behalf. We will treat these lists as potential CBI and will treat them according to 40 CFR part 2, subpart B, until determined otherwise.

A designated company official will be required to certify the completeness and accuracy of the threshold and affiliate answers upon report submission. In addition, the independent auditor must review threshold calculations during the attest engagement process and include in their attest engagement report to EPA any findings. This includes confirmation that the D6 RIN holdings and RVOs, if applicable, of all corporate affiliates were fully and properly accounted for in the calculations. Therefore, we are requiring that parties registered to hold RINs keep as records all threshold calculations, including corporate affiliate values, and provide those records to the auditor for review.

The calculation finalized in this action uses gasoline and diesel production and import volumes from the prior compliance year as a proxy for volumes in the current year. After considering comments, we recognize that the calculations can be an inaccurate representation of current year volumes in some cases, such as mergers or big changes in import volumes from year to year. Therefore, in response to comments, we are adding alternative provisions to the regulation that obligated parties can use, if specific criteria are met, to account for such discrepancies in their volume calculations. Any party that uses the alternative provisions is required to report the volume it calculated in its RIN Activity Report alongside the other required threshold information.

D. Reform 5: Enhancing EPA's Market Monitoring Capabilities

In this action, we are taking additional steps to enhance our market monitoring capabilities in order to better detect potential market manipulation. Monitoring the RIN market requires a substantial amount of market data. Prior to this action, we have required parties to report RIN trade prices, RIN trade volumes, and the parties involved in the RIN transaction. With this action, we are adding new reporting requirements.

As described in Section III.C, we are requiring parties to report the names of RIN-holding corporate affiliates and all contractual affiliates in their RIN Activity Reports. Since it will be collected in that form, we are not requiring that auditors include affiliate lists in their annual attest engagements submitted to EPA. We are only requiring attest auditors to review the RIN Activity Reports and confirm that the information reported about the threshold analysis and the affiliates was reported correctly. The auditor's findings will be reported to EPA as usual in the findings report.

We are requiring that a per-gallon RIN price be reported for a separated RIN transaction and that a price of $0.00 only be allowed for certain types of transactions. Prior to this action, we have allowed intracompany and tolling agreement transactions to report a RIN price of $0.00. In the proposal, we requested comment on any other legitimate reasons for reporting a $0.00 RIN price. Given the comments received, we are adding consignment transactions and RIN pass-back transactions to the list of transactions allowed to report a RIN price of $0.00.

We are requiring that transactions at a price other than $0.00 be reported as either a spot type or a term type.[232] We believe that collecting this additional information will improve our understanding of the RIN price reported and will allow us to filter term type prices out of the RIN price dataset that we publish and analyze internally for compliance oversight. Thus, the published price will be a better reflection of market prices on a given day.

We also confirm our intention to take non-regulatory steps after promulgation of this action to update business rules in EMTS such that both parties in a RIN transaction must enter the same RIN price in EMTS for the transaction to clear. Prior to this action, EMTS already had a business rule that required both parties in a RIN transaction to enter the same RIN volume, and this business rule has been very helpful in maintaining high quality volume data that we can reliably publish and use for compliance oversight. These and other business rules prevent data entry errors and prompt parties that have not properly followed the instructions in the regulations to correct their numbers. By adding a similar business rule to EMTS on RIN prices, we believe we can prevent reporting errors and improve the quality and reliability of our price data.

Finally, we are affirming our intent to employ a third-party outside of the regulatory process to monitor of the RIN market. We are aware of other environmental commodity markets that employ third-party market monitoring services to conduct analysis of the market, including screening for potential anti-competitive behavior or

[231] As defined in both the proposal and this action, contractual affiliation relates only to contracts for purchasing or holdings RINs and is not factored into the threshold analysis.

[232] EPA considers a spot type to be a transaction at fixed price, fixed quantity, and single delivery. EPA considers a term type as a transaction that isn't fixed price, fixed quantity, or single delivery.

market manipulation. For example, the Western Climate Initiative, Inc. provides administrative services to the linked cap and trade programs in Quebec and California, including managing a contract with a company that provides independent marketing monitoring for the jurisdictions. Quebec and California each maintain market monitoring capabilities to oversee the joint market. In addition, RGGI contracts with a third party to monitor its carbon dioxide (CO_2) allowance trading market and produce and publish quarterly and annual reports summarizing their findings. Based on comments received, we continue to believe additional RIN market oversight and monitoring from an independent third party can serve as a deterrent to manipulative behavior and increase market transparency, enabling the market to more easily function as designed. We intend to access a third-party market monitor after promulgation of this action through a standard contract mechanism, which requires contractor employees to maintain the same CBI safeguards as EPA employees.

E. Other Reforms Proposed But Not Finalized at This Time

In the NPRM, we proposed regulations related to three other reforms that were included in the President's Directive. Under Reform 2, we proposed that obligated parties would be required to retire 80 percent of their renewable fuel RVO after the first three quarters of the reporting year. Under Reform 3, we proposed that only certain non-obligated parties would be allowed to purchase separated D6 RINs, including exporters and those with a contract in place to supply obligated parties with RINs. Under Reform 4, we proposed that the number of D6 RINs a non-obligated party separated or purchased in a quarter would need to equal the number of D6 RINs it sold or retired in that same quarter. We sought comment on the potential benefits as well as potential downsides of these three reforms.

After reviewing the comments received, we have decided not to take final action with respect to the proposed regulatory amendments. In the NPRM, we explained that we have not seen any data-based evidence that market manipulation is occurring and that we were proposing the reforms to prevent market manipulation from possibly taking root in the future. We also emphasized that we were proceeding carefully because of the potential for these reforms to cause harm to the RIN market. Nothing in the comments received provides any additional data-based evidence or compelling information that alters the assessment of market manipulation we presented in the NPRM. Therefore, we are finalizing Reforms 1 and 5, which will provide additional data for EPA to analyze and discourage excessive RIN holdings. If, after reviewing that data and conducting additional market analysis, we determine that it would be prudent to finalize Reform 2, 3, or 4 in the future, we will share the analysis that has led us to believe it could be appropriate and will allow time for parties to respond, through a separate notice to the public and an additional period provided for public comment, before we proceed with a final rule codifying one or more of these proposed reforms. To that end, we have not further summarized or responded to comments on these three reforms in this action.

F. RIN Market Reform Economic Impacts

As EPA is finalizing just Reforms 1 and 5 in this action, the impacts of this action are expected to be increased transparency and minor costs associated with recordkeeping and reporting requirements. If EPA were to proceed further and finalize Reforms 2, 3, or 4, the agency would evaluate those impacts in the associated regulatory action(s).

1. Benefits of RIN Market Reform

The goals of the reforms finalized in this action are to increase our capability to monitor the market for anti-competitive behavior as well as to discourage RIN holding levels in excess of normal business practices. Therefore, we believe the net benefit of this action will be to support increased confidence in the RIN market and reduce perceived market risk. These reforms also provide the added benefit of increasing transparency into the RIN market. In general, commodities markets function optimally when all participants have access to as much information as possible, and this information is disseminated or shared with all parties at the same time. This helps create a level playing field and minimize any potential advantage one party may have over another. The net benefit of greater transparency helps market participants, such as obligated parties, plan short- and long-term strategies to manage their compliance costs.

2. Costs of RIN Market Reform

As detailed in Sections III.C and D, we are requiring additional reporting and recordkeeping for obligated parties under the RFS program and non-obligated parties that participate in the RIN market. As detailed in Section III.E, because we are not finalizing Reforms 2, 3, and 4 at this time, including the reporting and recordkeeping requirements proposed in association with those reforms, we expect modest costs to regulated entities associated with this final rule.[233] Specifically, we only anticipate minimal costs associated with reporting and recordkeeping requirements related to RIN holdings, affiliated parties, and any other data elements EPA collects as informed by Reforms 1 and 5. Therefore, we believe this action will not significantly affect RIN prices or market participation.

IV. Statutory and Executive Order Reviews

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

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

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

This action is considered an Executive Order 13771 regulatory action. Details on the estimated costs of this final rule can be found in Sections II.G.2 and III.F.2.

C. Paperwork Reduction Act (PRA)

With respect to the E15 1-psi waiver portion of this action, no new information collection burden is imposed under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0675. The changes to the regulations will remove a small segment of language on PTDs required to be generated and kept as records by parties that make and distribute gasoline under the regulations at 40 CFR part 80, subpart N. These changes will not require any additional information from regulated parties nor do we believe that these changes will substantively alter practices used by regulated parties to satisfy the PTD regulatory requirements.

The information collection activities related to the RIN market reform portion of this rule have been submitted for

[233] For a quantitative breakdown of new recordkeeping and reporting burden imposed by this action, see ''Final Rule ICR Detailed Burden Tables'' and ''Final Rule ICR Supporting Statement'' materials in the docket for this action.

approval to OMB under the PRA. The Information Collection Request (ICR) document that EPA prepared has been assigned EPA ICR number 2592.01. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

This ICR includes all additional RFS related information collection activities resulting from the Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations final rulemaking. These information collection activities include new recordkeeping and reporting requirements finalized under 40 CFR part 80, subpart M.

Respondents/affected entities: The respondents to this information collection fall into the following general industry categories: Petroleum refineries, ethyl alcohol manufacturers, other basic organic chemical manufacturing, chemical and allied products merchant wholesalers, petroleum bulk stations and terminals, petroleum and petroleum products merchant wholesalers, gasoline service stations, and marine service stations.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 22,119.

Frequency of response: Quarterly, annually.

Total estimated burden: 240,375 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $22,652,928 (per year).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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. Small entities that will be subject to the final rulemaking include domestic refiners that produce gasoline and/or diesel. In addition to domestic refiners, EPA believes the final rulemaking will also apply to other small entities. These entities include: Non-obligated parties under the RFS program that transact RINs; blenders that separate RINs from assigned volumes of renewable fuel; and brokers that facilitate transactions of RINs between parties. With respect to the E15 1-psi waiver portion of this action, the regulatory changes do not substantively alter the regulatory requirements on parties that make and distribute gasoline. Additionally, the interpretation to allow E15 to receive the 1-psi waiver will allow parties that make and distribute E15, including small entities, more flexibility in the summer to satisfy market demands. With respect to the RIN market reform provisions of this action, we have conducted a screening analysis to assess whether we should make a finding that this action will not have a significant economic impact on a substantial number of small entities.[234] As detailed in that analysis, the administrative recordkeeping and reporting burden imposed by the final rulemaking suggests minimal impacts to all entities, including non-obligated parties under the RFS program.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action implements mandates specifically and explicitly set forth in CAA sec. 211 and we believe that this action represents the least costly, most cost-effective approach to achieve the statutory requirements.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, EPA consulted with tribal officials during the development of this action. On February 28, 2019, EPA met with the National Tribal Air Association to highlight the upcoming proposed rulemaking. EPA did not receive any feedback at this consultation meeting or in subsequent comments.

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

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

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The flexibility provided to E15 by this action will enable additional supply of energy but are not expected to have an immediate significant effect on supply, distribution, or use of energy. The modifications to the RFS compliance system are not expected to have a significant effect on supply, distribution, or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

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). As discussed in Section II.F, we do not believe that this action will have any meaningful environmental impacts (positive or negative).

L. Congressional Review Act (CRA)

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

V. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for the procedural and compliance related aspects of this rule comes from sections 114, 208, and 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

[234] See ''Screening Analysis for the Final Modifications to RFS RIN Market Regulations,'' available in the docket for this action.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 30, 2019.

Andrew R. Wheeler,

Administrator.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix—Definition: Substantially Similar

EPA will treat any gasoline-ethanol blend containing more than 10 but no more than 15 volume percent ethanol (''E15''), and denatured fuel ethanol used to make such a gasoline-ethanol blended fuel for use by any person in light-duty vehicles manufactured after model year 2001 [1] as substantially similar to any unleaded gasoline or gasoline additive utilized in the certification of any light-duty motor vehicle under sections 206 and 213(a) of the Clean Air Act with certification fuel in accordance with 40 CFR 86.113–15 if the following criteria are met.

(1) *Fuel composition criteria.* The E15 must contain carbon, hydrogen, and oxygen, nitrogen, and/or sulfur, exclusively,[2] in the form of some combination of the following:

(a) Hydrocarbons;

(b) Denatured fuel ethanol that meets the specifications of ASTM International Standard D4806–19;

(c) Additional fuel additive(s) [3] at a concentration of no more than 1.0 percent by volume which contributes no more than 3 ppm sulfur by weight to the finished fuel; and

(d) The gasoline-ethanol blended fuel, denatured fuel ethanol, and any additives blended into the fuel must contain only carbon, hydrogen, and any one or all of the following elements: Oxygen, nitrogen, and/or sulfur.[4]

(2) *Physical and chemical characteristics criteria.* The gasoline-ethanol blended fuel must possess all of the following:

(a) The physical and chemical characteristics of an unleaded automotive spark-ignition engine fuel (*i.e.,* unleaded gasoline) as specified in ASTM International Standard D4814–19 for at least one of the United States Seasonal and Geographical Volatility Classes specified in the standard;

(b) The applicable distillation temperature limitations listed in the Vapor Pressure and Distillation Class Requirements as specified in ASTM International Standard D4814–19; and

(c) The gasoline-ethanol blended fuel does not exceed 9.0 pounds per square inch (psi) RVP during the time period from May 1 to September 15.[5]

(3) *Misfueling mitigation criteria.* Fuel and fuel additive manufacturers that introduce E15 or ethanol for use in the manufacture of E15 must take reasonable precautions to mitigate the misfueling of vehicles, engines, and equipment not covered by this definition (*i.e.,* anything other than a model year 2001 and newer light-duty vehicle). Fuel and fuel additive manufacturers must submit to EPA a plan, for EPA's approval, and must fully implement that EPA-approved plan, prior to introduction of E15 or ethanol for use in the manufacture of E15 into commerce. The plan must include provisions that will implement all reasonable precautions for ensuring that the E15 is only introduced into commerce for use in model year 2001 and newer light-duty vehicles. The plan must be sent to the following address: Director, Compliance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Mail Code 6405J, Washington, DC 20460.

(4) Failure to fully fulfill any criteria of this definition means the fuel or fuel additive introduced into commerce is not covered by this definition.

Amendments to Regulations

For the reasons set forth in the preamble, EPA amends 40 CFR part 80 as follows:

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart B—Controls and Prohibitions

■ 2. Section 80.27 is amended by revising paragraph (d)(2) to read as follows:

§ 80.27 Controls and prohibitions on gasoline volatility.

* * * * *

(d) * * *

(2) In order to qualify for the special regulatory treatment specified in paragraph (d)(1) of this section, gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 15% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by the use of one of the testing methodologies specified in § 80.47. The maximum ethanol content shall not exceed any applicable waiver conditions under section 211(f) of the Clean Air Act.

* * * * *

■ 3. Section 80.28 is amended by revising paragraphs (g)(6)(iii), (g)(8) introductory text, and (g)(8)(ii) as follows:

§ 80.28 Liability for violations of gasoline volatility controls and prohibitions.

* * * * *

(g) * * *

(6) * * *

(iii) That the gasoline determined to be in violation contained no more than 15% ethanol (by volume) when it was delivered to the next party in the distribution system.

* * * * *

(8) In addition to the defenses provided in paragraphs (g)(1) through (6) of this section, in any case in which an ethanol blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraph (b), (c), (d), (e), or (f) of this section, as a result of gasoline which contains between 9 and 15 percent ethanol (by volume) but exceeds the applicable standard by more than one pound per square inch (1.0 psi), the ethanol blender, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which the gasoline was received or other evidence acceptable to the Administrator, that:

* * * * *

(ii) The ethanol portion of the blend does not exceed 15 percent (by volume); and

* * * * *

Subpart M—Renewable Fuel Standard

■ 4. Section 80.1401 is amended by adding in alphabetical order definitions for ''Contractual affiliate,'' ''Corporate affiliate,'' ''Corporate affiliate group,'' ''DX RIN,'' and ''End of Day'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Contractual affiliate means one of the following:

(1) Two parties are contractual affiliates if they have an explicit or implicit agreement in place for one to

[1] This definition does not apply to model year 2000 and older light-duty motor vehicles, heavy-duty gasoline engines and vehicles, on and off-highway motorcycles, and nonroad engines, vehicles, and equipment.

[2] Impurities that produce gaseous combustion products (*i.e.,* products which exist as a gas at Standard Temperature and Pressure) may be present in the fuel at trace levels. An impurity is a substance that is present through unintentional contamination, or remains naturally, after normal processing of the fuel is completed, including where applicable processing that attempted to remove such impurities.

[3] For the purposes of this interpretative rule, the term ''fuel additive'' refers only to that part of the additive package that is not hydrocarbon.

[4] Impurities which produce gaseous combustion products may be present in the fuel additive at trace levels.

[5] Gasoline-ethanol blended fuels containing more than 10 and no more than 15 volume percent ethanol may have an RVP of 1.0 psi greater than the applicable RVP limitations set under section 211(h)(1) of the Act as allowed under section 211(h)(4) of the Act.

purchase or hold RINs on behalf of the other or to deliver RINs to the other. This other party may or may not be registered under the RFS program.

(2) Two parties are contractual affiliates if one RIN-owning party purchases or holds RINs on behalf of the other. This other party may or may not be registered under the RFS program.

* * * * *

Corporate affiliate means one of the following:

(1) Two RIN-holding parties are corporate affiliates if one owns or controls ownership of more than 20 percent of the other.

(2) Two RIN-holding parties are corporate affiliates if one parent company owns or controls ownership of more than 20 percent of both.

Corporate affiliate group means a group of parties in which each party is a corporate affiliate to at least one other party in the group.

* * * * *

DX RIN means a RIN with a D code of X, where X is the D code of the renewable fuel as identified under § 80.1425(g), generated under § 80.1426, and submitted under § 80.1452. For example, a D6 RIN is a RIN with a D code of 6.

* * * * *

End of day means 7:00 a.m. Coordinated Universal Time (UTC).

* * * * *

■ 5. Section 80.1402 is added to read as follows:

§ 80.1402 Availability of information; confidentiality of information.

(a) Beginning January 1, 2020, no claim of business confidentiality may be asserted by any person with respect to information submitted to EPA under § 80.1451(c)(2)(ii)(E), whether submitted electronically or in paper format. EPA may make information submitted under § 80.1451(c)(2)(ii)(E) available to the public.

(b) [Reserved]

■ 6. Section 80.1435 is added to read as follows:

§ 80.1435 How are RIN holdings and RIN holding thresholds calculated?

Beginning January 1, 2020, any party that holds RINs must comply with the requirements of this section.

(a) *RIN holdings calculation.* (1) Each party must calculate daily end-of-day separated D6 RIN holdings by aggregating its end-of-day separated D6 RIN holdings with the end-of-day separated D6 RIN holdings of all corporate affiliates in a corporate affiliate group and use the end-of-day separated D6 RIN holdings as specified in paragraph (b) of this section.

(2) Each party must calculate, as applicable, the holdings-to-market percentage under paragraph (b)(1) of this section and the holdings-to-obligation percentage under paragraph (b)(2) of this section quarterly in accordance with the schedule specified in Table 1 to § 80.1451.

(3) For a corporate affiliate group containing at least one obligated party that has a holdings-to-market percentage greater than 3.00 percent for any calendar day in a compliance period, as determined under paragraph (b)(1) of this section, each party must calculate the corporate affiliate group's holdings-to-obligation percentage as specified in paragraph (b)(2) of this section.

(4) Each party must individually keep copies of all calculations and supporting information for separated D6 RIN holding threshold calculations required under this section as specified in § 80.1454(u).

(b) *RIN holding thresholds calculations.* (1) *Primary test calculations.* For each day in a compliance period, each party that owns RINs must calculate the holdings-to-market percentage for their corporate affiliate group using the method specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section, as applicable.

(i) For each day beginning January 1 through March 31, calculate the holdings-to-market percentage for a corporate affiliate group as follows:

$$HTMP_d = [(\Sigma D6RIN_d)_a/(CNV_VOL_{TOT,i} * 1.25)] * 100$$

Where:

$HTMP_d$ = The holdings-to-market percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to the total expected number of separated D6 RINs in the market in compliance period i, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds at the end of calendar day d, in RIN-gallons.

$CNV_VOL_{TOT,i}$ = The total expected annual volume of conventional renewable fuels for the compliance period i, in gallons. Unless otherwise specified, this number is 15 billion gallons.

(ii) For each day beginning April 1 through December 31, calculate the holdings-to-market percentage for a corporate affiliate group as follows:

$$HTMP_d = [(\Sigma D6RIN_d)_a/(CNV_VOL_{TOT,i})] * 100$$

Where:

$HTMP_d$ = The holdings-to-market percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to the total expected number of separated D6 RINs in the market in compliance period i, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds at the end of calendar day d, in RIN-gallons.

$CNV_VOL_{TOT,i}$ = The total expected annual volume of conventional renewable fuels for compliance period i, in gallons. Unless otherwise specified, this number is 15 billion gallons.

(2) *Secondary threshold calculations.* For each day in a compliance period where a corporate affiliate group is required to calculate with the secondary threshold requirement under paragraph (a)(3) of this section, each party must calculate the holdings-to-obligation percentage for their corporate affiliate group using the methods at paragraph (b)(2)(i) or (b)(2)(ii) of this section, as applicable.

(i) For each day beginning January 1 through March 31, calculate the holdings-to-obligation percentage as follows:

$$HTOP_d = [(\Sigma D6RIN_d)_a/\{[(\Sigma CNV_RVO_{i-1})_a + (\Sigma CNV_DEF_{i-1})_a + (\Sigma CNV_DEF_{i-2})_a] * 1.25\}] * 100$$

Where:

$HTOP_d$ = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period i-1, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds on calendar day d, in RIN-gallons.

$(\Sigma CNV_RVO_{i-1})_a$ = Sum of the conventional RVOs for each individual corporate affiliate a for compliance period i-1 as calculated in paragraph (b)(2)(iii) of this section, in RIN-gallons.

$(\Sigma CNV_DEF_{i-1})_a$ = Sum of the conventional deficits for each individual corporate affiliate a as calculated in paragraph (b)(2)(iv) of this section for compliance period i-1, in RIN-gallons.

$(\Sigma CNV_DEF_{i-2})_a$ = Sum of the conventional deficits for each individual corporate affiliate a as calculated in paragraph (b)(2)(iv) of this section for compliance period i-2, in RIN-gallons.

(ii) For each day beginning April 1 through December 31, calculate the

holdings-to-obligation percentage as follows:

$$HTOP_d = \{(\Sigma D6RIN_d)_a/[(\Sigma CNV_RVO_{i-1})_a + (\Sigma CNV_DEF_{i-1})_a]\} * 100$$

Where:

$HTOP_d$ = The holdings-to-obligation percentage is the percentage of separated D6 RINs a corporate affiliate group holds on calendar day d relative to their expected separated D6 RIN holdings based on the corporate affiliate group's conventional RVO for compliance period i-1, in percent.

d = A given calendar day.

i = The compliance period, typically expressed as a calendar year.

a = Individual corporate affiliate in a corporate affiliate group.

$(\Sigma D6RIN_d)_a$ = Sum of the number of separated D6 RINs each individual corporate affiliate a holds on calendar day d, in RIN gallons.

$(\Sigma CNV_RVO_{i-1})_a$ = Sum of the conventional RVOs for each individual corporate affiliate a for compliance period i-1 as calculated in paragraph (b)(2)(iii) of this section, in RIN-gallons.

$(\Sigma CNV_DEF_{i-1})_a$ = Sum of the conventional deficits for each individual corporate affiliate a as calculated in paragraph (b)(2)(iv) of this section for compliance period i-1, in RIN-gallons.

(iii) As needed to calculate the holdings-to-obligation percentage in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, calculate the conventional RVO for an individual corporate affiliate as follows:

$$CNV_RVO_i = \{[RFStd_{RF,i} * (GV_i + DV_i)]—[RFStd_{AB,i} * (GV_i + DV_i)]\} + ERVO_{RF,i}$$

Where:

CNV_RVO_i = The conventional RVO for an individual corporate affiliate for compliance period i without deficits, in RIN-gallons.

i = The compliance period, typically expressed as a calendar year.

$RFStd_{RF,i}$ = The standard for renewable fuel for compliance period i determined by EPA pursuant to § 80.1405, in percent.

$RFStd_{AB,i}$ = The standard for advanced biofuel for compliance period i determined by EPA pursuant to § 80.1405, in percent.

GV_i = The non-renewable gasoline volume, determined in accordance with § 80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for compliance period i, in gallons.

DV_i = The non-renewable diesel volume, determined in accordance with § 80.1407(b), (c), and (f), which is produced in or imported into the 48 contiguous states or Hawaii by an obligated party for compliance period i, in gallons.

$ERVO_{RF,i}$ = The sum of all renewable volume obligations from exporting renewable fuels, as calculated under § 80.1430, by an obligated party for compliance period i, in RIN-gallons.

(iv) As needed to calculate the holdings-to-obligation percentage in paragraphs (b)(2)(i) and (b)(2)(ii) of this section, calculate the conventional deficit for an individual corporate affiliate as follows:

$$CNV_DEF_i = D_{RF,i}—D_{AB,i}$$

Where:

CNV_DEF_i = The conventional deficit for an individual corporate affiliate for compliance period i, in RIN-gallons. If a conventional deficit is less than zero, use zero for conventional deficits in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

i = The compliance period, typically expressed as a calendar year.

$D_{RF,i}$ = Deficit carryover from compliance period i for renewable fuel, in RIN-gallons.

$D_{AB,i}$ = Deficit carryover from compliance period i for advanced biofuel, in RIN-gallons.

(c) *Exceeding the D6 RIN holding thresholds.* (1) *Primary threshold test.* A non-obligated party or corporate affiliate group that does not contain an obligated party and that has a holdings-to-market percentage greater than 3.00 percent for any calendar day in a compliance period, as determined under paragraph (b)(1) of this section, has exceeded the primary threshold.

(2) *Secondary threshold test.* Any party or corporate affiliate group required to calculate a holdings-to-obligation percentage under paragraph (a)(3) of this section and that has a holdings-to-obligation percentage greater than 130.00 percent for any calendar day in a compliance period, as determined under paragraph (b)(2) of this section, has exceeded the secondary threshold.

(d) *Alternative gasoline and diesel production volume allowance.* Parties that must calculate the secondary threshold under paragraph (b)(2) of this section may use alternative gasoline and diesel production volumes if all the following requirements are met:

(1) The party must have a reasonable basis for using the alternative production numbers (*e.g.,* selling or acquiring a refinery or a shutdown of a refinery).

(2) When substituting the alternative production volume for the conventional RVO volume, the party must use actual production numbers for any completed quarter in the compliance period and extrapolated production numbers for any future quarters.

(3) The party must meet the applicable recordkeeping requirements of § 80.1454.

(4) The party must retain documentation of the reasonable basis and the calculations used and must provide these to the auditor conducting the attest engagement under § 80.1464.

(e) *Exemption from aggregation requirements.* (1) A party may claim exemption from the requirement to aggregate D6 RIN holdings for any affiliate where one or more of the following apply:

(i) There is an absence of common trading-level control and information sharing with the affiliate.

(ii) The sharing of information regarding aggregation with the affiliate could lead either party to violate state or Federal law, or the law of a foreign jurisdiction.

(iii) The affiliate is exempt from the regulations regarding commodities and securities exchanges under 17 CFR 150.4(b)(7).

(2) A party must retain detailed, explanatory documentation supporting its exemption and must provide this documentation to the attest auditor under § 80.1464, and to EPA upon request. Such records include, but are not limited to, the following:

(i) Documents that reflect that the parties do not have knowledge of the trading decisions of the other.

(ii) Documents that demonstrate that there are developed and independent trading systems in place.

(iii) Documents that demonstrate that the parties have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other.

(iv) Documents reflective of the risk management and other systems in place.

(v) Documents that support an exemption under 17 CFR 150.4(b)(7).

(vi) Any other documents that support the applicability of the exemption.

■ 7. Section 80.1451 is amended by:

■ a. Revising paragraph (c)(2) introductory text;

■ d. Redesignating paragraphs (c)(2)(i) through (xviii) as paragraphs (c)(2)(i)(A) through (R); and

■ e. Adding new paragraphs (c)(2)(i) introductory text and (c)(2)(ii).

The revision and additions read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(c) * * *

(2) RIN activity reports must be submitted to EPA according to the schedule specified in paragraph (f)(2) of this section. Each report must summarize RIN activities for the reporting period, separately for RINs

separated from a renewable fuel volume and RINs assigned to a renewable fuel volume.

(i) For compliance periods ending on or before December 31, 2019, each report must include all of the following information:

* * * * *

(ii) For compliance periods starting on or after January 1, 2020, each report must include all of the following information:

(A) The submitting party's name.

(B) The submitting party's EPA-issued company identification number.

(C) Primary registration designation or compliance level for compliance year (*e.g.,* ''Aggregated Refiner,'' ''Exporter,'' ''Renewable Fuel Producer,'' ''RIN Owner Only,'' etc.).

(D) All of the following information:

(*1*) The number of current-year RINs owned at the start of the quarter.

(*2*) The number of prior-year RINs owned at the start of the quarter.

(*3*) The total current-year RINs purchased.

(*4*) The total prior-year RINs purchased.

(*5*) The total current-year RINs sold.

(*6*) The total prior-year RINs sold.

(*7*) The total current-year RINs retired.

(*8*) The total current-year RINs retired that are invalid as defined in § 80.1431(a).

(*9*) The total prior-year RINs retired.

(*10*) The total prior-year RINs retired that are invalid as defined in § 80.1431(a).

(*11*) The number of current-year RINs owned at the end of the quarter.

(*12*) The number of prior-year RINs owned at the end of the quarter.

(*13*) The number of RINs generated.

(*14*) The volume of renewable fuel (in gallons) owned at the end of the quarter.

(E)(*1*) Indicate if the submitting party or the submitting party's corporate affiliate group exceeded the primary threshold for any day in the quarter under § 80.1435(c)(1). If the submitting party is in an affiliate group that does not contain an obligated party, and the affiliate group has exceeded the primary threshold, then EPA may publish the name and EPA-issued company identification number of the submitting party.

(*2*) Indicate if the submitting party or the submitting party's corporate affiliate group exceeded the secondary threshold for any day in the quarter under § 80.1435(c)(2). If the submitting party is an obligated party and has exceeded the secondary threshold or is in a corporate affiliate group containing an obligated party that has exceeded the secondary threshold, then EPA may publish the name and EPA-issued company identification number of the submitting party.

(F) A list of all corporate and contractual affiliates during the reporting period. For each affiliate, include the identification information (including the EPA company ID number, if registered) and the affiliate type.

(G) The RVO used to calculate D6 RIN threshold, if alternative gasoline and diesel production volumes were used under § 80.1435(d).

(H) A list of contractual affiliates that had a contract with the party that did not result in transfer of RINs to the party during the reporting period.

(I) Any additional information that the Administrator may require.

* * * * *

■ 8. Section 80.1452 is amended by:

■ a. Revising paragraph (c)(12); and

■ b. Adding paragraph (c)(15).

The revision and addition read as follows:

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(c) * * *

(12)(i) For transactions through December 31, 2019, the per gallon RIN price or the per-gallon price of renewable fuel with RINs included.

(ii) For transactions on or after January 1, 2020:

(A) For RIN buy or sell transaction types including assigned RINs, the per-gallon RIN price or the per-gallon price of renewable fuel with RINs included.

(B) For RIN buy or sell transaction types including separated RINs, the per-gallon RIN price.

* * * * *

(15) For buy or sell transactions of separated RINs on or after January 1, 2020, the mechanism used to purchase the RINs (*e.g.,* spot market or fulfilling a term contract).

* * * * *

■ 9. Section 80.1454 is amended by adding paragraphs (i)(1) and (2) and (u) and (v) to read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(i) * * *

(1) For buy or sell transactions of separated RINs, parties must retain records substantiating the price reported to EPA under § 80.1452.

(2) For buy or sell transactions of separated RINs on or after January 1, 2020, parties must retain records demonstrating the transaction mechanism (*e.g.,* spot market or fulfilling a term contract).

* * * * *

(u) *Requirements for recordkeeping of RIN holdings for all parties transacting or owning RINs.* (1) Starting January 1, 2020, parties must retain records related to end-of-day separated D6 RIN holdings, and any associated calculations recorded in order to meet the RIN holdings requirements described in § 80.1435 for a period of at least five years. Such records must include information related to any corporate affiliates, contractual affiliates, and their RIN holdings and calculations.

(2) Parties must retain records related to their reports to EPA regarding threshold compliance under §§ 80.1435 and 80.1451 for a period of at least five years.

(v) *Requirements for recordkeeping of contractual and corporate affiliates.* (1) Parties must retain records including, but not limited to, the name, address, business location, contact information, and description of relationship, for each RIN-holding corporate affiliate for a period of at least five years. For the corporate affiliate group, a relational diagram.

(2) Parties must retain records including, but not limited to, the name, address, business location, contact information, and contract or other agreement for each contractual affiliate for a period of at least five years.

(3) If a party claims an exemption from aggregation under § 80.1435(e), the party must retain all records in support of the exemption for a period of at least five years and must provide these records to the attest auditor under § 80.1464, and to EPA upon request.

■ 10. Section 80.1464 is amended by adding paragraphs (a)(4) through (6), (b)(5) through (7), and (c)(3) through (5) to read as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

(a) * * *

(4) *RIN holdings.* (i) Obtain and read copies of the RIN holdings calculations performed under § 80.1435 for the party and any corporate affiliates and the applicable database, spreadsheet, or other documentation the party maintains.

(ii) Select sample calculations in accordance with the guidelines in § 80.127; compute and report as a finding the results of these calculations and verify that the results agree with the values reported to EPA.

(iii) Identify any date(s) where the aggregated calculation exceeded the RIN holding threshold(s) specified in

§ 80.1435. Compute and state as a finding whether this information agrees with the party's reports (notification of threshold exceedance) to EPA.

(5) *Affiliates.* Review reports and records related to corporate and contractual affiliates and state whether this information agrees with the party's reports to EPA, and report as a finding any exceptions.

(6) *Exemption.* Review and confirm the existence of records supporting an exemption from aggregation claimed by the party under § 80.1435(e), and report as a finding any exceptions.

(b) * * *

(5) *RIN holdings.* (i) Obtain and read copies of the RIN holdings calculations performed under § 80.1435 for the party and any corporate affiliates and the applicable database, spreadsheet, or other documentation the party maintains.

(ii) Select sample calculations in accordance with the guidelines in § 80.127; compute and report as a finding the results of these calculations and verify that the results agree with the values reported to EPA.

(iii) Identify any date(s) where the aggregated calculation exceeded the RIN holding threshold(s) specified in § 80.1435. Compute and state as a finding whether this information agrees with the party's reports (notification of threshold exceedance) to EPA.

(6) *Affiliates.* Review reports and records related to corporate and contractual affiliates and state whether this information agrees with the party's reports to EPA, and report as a finding any exceptions.

(7) *Exemption.* Review and confirm the existence of records supporting an exemption from aggregation claimed by the party under § 80.1435(e), and report as a finding any exceptions.

* * * * *

(c) * * *

(3) *RIN holdings.* (i) Obtain and read copies of the RIN holdings calculations performed under § 80.1435 for the party and any corporate affiliates and the applicable database, spreadsheet, or other documentation the party maintains.

(ii) Select sample calculations in accordance with the guidelines in § 80.127; compute and report as a finding the results of these calculations and verify that the results agree with the values reported to EPA.

(iii) Identify any date(s) where the aggregated calculation exceeded the RIN holding threshold(s) specified in § 80.1435. Compute and state as a finding whether this information agrees with the party's reports (notification of threshold exceedance) to EPA.

(4) *Affiliates.* Review reports and records related to corporate and contractual affiliates and state whether this information agrees with the party's reports to EPA, and report as a finding any exceptions.

(5) *Exemption.* Review and confirm the existence of records supporting an exemption from aggregation claimed by the party under § 80.1435(e), and report as a finding any exceptions.

* * * * *

Subpart N—Additional Requirements for Gasoline-Ethanol Blends

■ 11. Section 80.1503 is amended by:

■ a. Revising paragraph (a)(1)(vi)(B);

■ b. Removing paragraph (a)(1)(vi)(C);

■ c. Revising paragraph (b)(1)(vi)(B); and

■ d. Removing paragraphs (b)(1)(vi)(C) through (E).

The revisions read as follows:

§ 80.1503 What are the product transfer document requirements for gasoline-ethanol blends, gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?

(a) * * *

(1) * * *

(vi) * * *

(B) The conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol as described in § 80.27(d)(3).

* * * * *

(b) * * *

(1) * * *

(vi) * * *

(B)(*1*) For gasoline containing less than 9 volume percent ethanol, the following statement: ''EX—Contains up to X% ethanol. The RVP does not exceed [fill in appropriate value] psi.'' The term X refers to the maximum volume percent ethanol present in the gasoline.

(*2*) The conspicuous statement that the gasoline being shipped contains ethanol and the percentage concentration of ethanol as described in § 80.27(d)(3) may be used in lieu of the statement required under paragraph (b)(1)(vi)(B)(*1*) of this section.

* * * * *

§ 80.1504 [Amended]

■ 12. Section 80.1504 is amended by removing and reserving paragraphs (f) and (g).

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