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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

2 CFR Part 3187

RIN 3137–AA26

IMLS Grant Regulations To Reflect the Museum and Library Services Act of 2018

AGENCY: Institute of Museum and Library Services (IMLS or Institute).

ACTION: Final rule; technical amendments.

SUMMARY: This rule amends the IMLS grant regulations to revise the definition of ''museum'' to include ''tribal'' and ''cultural heritage.'' These amendments are necessitated by changes to the definition of ''museum'' in the recent reauthorization of the corresponding statute, namely the Museum and Library Services Act of 2018.

DATES: This rule is effective June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Calvin D. Trowbridge III, Deputy General Counsel, Institute of Museum and Library Services, (202) 653–4675.

SUPPLEMENTARY INFORMATION:

I. Background Information

On December 31, 2018, the Museum and Library Services Act of 2018 (the Act) became law (Pub. L. 115–410). In addition to reauthorizing the Institute of Museum and Library Services (the Institute or IMLS) and effectuating other amendments, the Act revised the definition of ''museum'' for subchapter III Museum Services. The revised definition of ''museum'' now includes ''tribal'' and ''cultural heritage.'' In order to align the agency's regulations with the changes to the revised statutory definition, this rule makes corresponding revisions to the definition of ''museum'' in the IMLS grant regulations in 2 CFR part 3187.

II. Discussion of the Final Rule

A. Non-Discretionary Changes Resulting From the Museum and Library Services Act of 2018 (Pub. L. 115–410)

To reflect the Museum and Library Services Act of 2018 (Pub. L. 115–410) (the Act), the Institute has made changes to the definition of ''museum'' in the IMLS grant regulations.

B. Response to Comment and Changes From Proposed Rule

Because these amendments are made to correspond with the changes in the Act, there was no proposed rule; this is the final rule.

III. Regulatory Analyses

Regulatory Planning and Review (E.O. 12866)

Under Executive Order 12866, the Institute must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule updates the Institute's grant regulations to reflect revisions to the definition of ''museum'' made by the Museum and Library Services Act of 2018 (Pub. L. 115–410) (the Act). The revised ''museum'' definition is expanded to include ''tribal'' and ''cultural heritage.'' As such, it does not impose a compliance burden on the economy generally or on any person or entity. Accordingly, this rule is not a ''significant regulatory action'' from an economic standpoint, and it does not otherwise create any inconsistences or budgetary impacts to any other agency or Federal Program.

Regulatory Flexibility Act

Because this rule would update existing regulations, the Institute has determined in Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) review that this rule will not have a significant economic impact on a substantial number of small entities because it simply makes amendments to reflect the Museum and Library Services Act of 2018 (Pub. L. 115–410).

Paperwork Reduction Act

This rule is exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3521), since it amends existing IMLS grant regulations to reflect the Museum and Library Services Act of 2018 (Pub. L. 115–410). An OMB form 83–1 is not required.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501–1571), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, or tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. No rights, property or compensation has been, or will be, taken. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have

federalism implications that warrant the preparation of a federalism assessment.

Civil Justice Reform (E.O. 12988)

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

Consultation and Coordination With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, the Institute has evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

List of Subjects in 2 CFR Part 3187

Federal awards, Definitions.

For the reasons stated in the preamble and under the authority of 20 U.S.C. 9101 *et seq.,* the Institute of Museum and Library Services amends 2 CFR part 3187 as follows:

PART 3187—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 3187 continues to read as follows:

Authority: 20 U.S.C. 9101–9176, 9103(h); 20 U.S.C. 80r–5; 2 CFR part 200.

■ 2. In § 3187.3, amend paragraph (a) introductory text by adding ‘‘, tribal,’’ after ‘‘Museum means a public’’, and by adding ‘‘, cultural heritage,’’ after ‘‘educational’’.

Dated: June 10, 2019.

Kim Miller,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2019–12519 Filed 6–13–19; 8:45 am]

BILLING CODE 7036–01–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 235

[CBP Dec. 19–05]

RIN 1651–AB24

U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card Program Regulations

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Final rule; conforming amendment.

SUMMARY: This document amends the Department of Homeland Security's (DHS) regulations pertaining to the U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card Program to conform to the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2017 (APEC Act of 2017). Among other conforming changes, it removes the sunset provision and adds a definition of trusted traveler program. It also updates the regulations to correct two minor errors.

DATES: The final rule is effective June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Eddy (Rafael) R. Henry, Office of Field Operations, (202) 344–3251, *rafael.e.henry@cbp.dhs.gov.*

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I. Background

The Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011 (APEC Act of 2011) established the U.S. APEC Business Travel Card (ABTC) Program and authorized the Secretary of Homeland Security to issue ABTCs through September 30, 2018. Public Law 112–54, 125 Stat. 550. It also authorized DHS to issue implementing regulations. The U.S. ABTC Program provides qualified U.S. business travelers engaged in business in the APEC region, or U.S. Government officials actively engaged in APEC business, the ability to access fast-track immigration lanes at participating airports in foreign APEC member economies. DHS implemented the program, including the general eligibility requirements, through an interim final rule (IFR) published in the **Federal Register** (79 FR 27161) on May 13, 2014. This interim rule was adopted as a final rule published in the **Federal Register** (81 FR 84403) on November 23, 2016. On November 2, 2017, the President signed into law the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2017 (APEC Act of 2017). Public Law 115–79, 131 Stat. 1258. The APEC Act of 2017 replaced the APEC Act of 2011, setting forth, without changing, the general eligibility requirements for the U.S. ABTC and making the U.S. ABTC Program an ongoing program. In addition, the APEC Act of 2017 included some clarifying provisions, such as a definition of a trusted traveler program. APEC, the U.S. ABTC Program, and the new law are discussed in more detail below.

A. Asia-Pacific Economic Cooperation (APEC)

The United States is a member of APEC, which is an economic forum comprised of twenty-one members.[1] APEC's primary goal is to support sustainable economic growth and prosperity in the Asia-Pacific region. One way APEC promotes this is by facilitating a favorable and sustainable business environment. APEC also promotes regional connectivity through better physical and institutional linkages to ensure goods, services, and people move quickly and efficiently across borders. The ABTC Program discussed in Section B makes it simpler for business people to travel, thus enabling them to conduct their business, trade, and investment.

B. The APEC Business Travel Card (ABTC)

One of APEC's business facilitation initiatives is the ABTC Program. Pursuant to the ABTC Program, APEC members can issue ABTC cards to

[1] APEC members are also referred to as 'economies' since the APEC process is primarily concerned with trade and economic issues with the members engaging each other as economic entities. The most recently updated list of members is available at the APEC website at *https://www.apec.org/About-Us/About-APEC/Member-Economies (last accessed Oct. 22, 2018).* For simplicity, we will generally refer to them in the preamble of this document as APEC ‘‘members,’’ except where the term ‘‘member economy’’ or ‘‘member economies’’ is more appropriate.

business travelers and senior government officials who meet certain standards established by the members to provide simpler short-term entry procedures within the APEC region.[2] The parameters of the ABTC Program are more fully set forth in the APEC Business Travel Card Operating Framework (''APEC Framework'').[3]

Individuals may apply for the ABTC Program if they: (1) Are citizens of a participating member economy;[4] (2) have never been convicted of a criminal offense; (3) hold a valid passport issued by the home economy;[5] and, (4) are bona fide business persons engaged in business who may need to travel frequently on short-term visits within the APEC region to fulfill business commitments. A bona fide business person is defined in the APEC Framework as a person who is engaged in the trade of goods, the provision of services, or the conduct of investment activities. Senior government officials or other government officials actively engaged in APEC business may be eligible for an ABTC as well. Each APEC member determines its own definition of the term ''senior Government official.'' Under the APEC Framework, the following persons are not eligible for ABTCs: the business person's dependent spouse or children; persons who wish to engage in paid employment (*i.e.,* obtain a paid employment position located in a foreign APEC member economy) or a working holiday; and professional athletes, news correspondents, entertainers, musicians, artists, or persons engaged in similar occupations. Finally, the APEC Framework provides that members may impose additional eligibility criteria.

C. U.S. Participation in the ABTC Program

(i) APEC Act of 2011

The APEC Act of 2011 became law on November 12, 2011. Public Law 112–54, 125 Stat. 550. It set forth the basic eligibility and operational criteria for the U.S. ABTCs, and authorized the Secretary of Homeland Security, in coordination with the Secretary of State, to issue U.S. ABTCs through September 30, 2018. The APEC Act of 2011 specifically authorized the Secretary of Homeland Security to issue U.S. ABTCs to any eligible person, including business persons and U.S. Government officials actively engaged in APEC business, who is approved and in good standing in an international trusted traveler program of DHS. The APEC Act of 2011 also authorized the Secretary of Homeland Security, in coordination with the Secretary of State, to prescribe the necessary regulations regarding conditions of or limitations on eligibility for an ABTC.

Pursuant to the APEC Act of 2011, and after consultation with the Department of State and the private sector, DHS published an IFR in the **Federal Register** amending the DHS regulations to establish the U.S. ABTC program. 79 FR 27161 (May 13, 2014).[6] The rule promulgated regulations that adhered to the APEC Framework in effect at that time and implemented the U.S. ABTC program in accordance with the APEC Act of 2011. A final rule published on November 23, 2016 that adopted the interim amendments as final.[7]

The IFR explained that, in accordance with the APEC Framework, participation in the U.S. ABTC Program was limited to U.S. citizens[8] who are either bona fide business persons engaged in APEC business, or U.S. Government officials actively engaged in APEC business. 79 FR 27161, 27164, 27174. It further defined ''bona fide business persons engaged in business in the APEC region'' as persons engaged in the trade of goods, the provision of services or the conduct of investment activities in the APEC region, and ''APEC business'' to mean U.S. Government activities that support the work of APEC. *Id.* At the same time, the IFR noted that, in accordance with the APEC Framework, professional athletes, news correspondents, entertainers, musicians, artists or persons engaged in similar occupations were not considered to be bona fide business travelers. *Id.*

The IFR clarified that, while the APEC Act of 2011 referred to membership in a DHS trusted traveler program as a precondition for participation in the U.S. ABTC Program, not all DHS trusted traveler programs were compatible with U.S. ABTC travel. Consequently, DHS limited eligibility to participants of Global Entry, NEXUS and SENTRI due to their eligibility requirements, vetting process and expedited processing at ports of entry.[9] *Id.* The IFR and final rule also set forth the U.S. ABTC application process.[10] *See,* 79 FR 27161, 27165, 81 FR 84403, 84407.

The IFR provided that U.S. ABTC card holders may apply to renew their membership up to a year prior to the expiration of their ABTCs, as long as they did so before the expiration of the U.S. ABTC Program. The IFR also noted that a renewal application would require a new U.S. ABTC application, fee and review of eligibility criteria, including membership in a CBP trusted traveler program. *Id.*

Finally, the IFR set forth the notification procedures for applicants who may be denied a U.S. ABTC, listed reasons that a U.S. ABTC holder may be removed from the U.S. ABTC Program, and provided redress procedures for individuals who wished to contest their denial or termination from the U.S. ABTC Program. *Id.* at 27165–66, 27175.

The IFR became effective on June 12, 2014, and on that date CBP began issuing U.S. ABTCs to qualified U.S. citizens. At that time, in accordance

[2] APEC distinguishes between fully participating and transitional members for the purposes of the ABTC Program. In particular, fully participating members do not require a separate business visa or permit application from ABTC holders to whom they have granted preclearance. Generally, pre-clearance is the prior permission given by economies to an ABTC holder that grants cardholders the authorization to travel to, enter and undertake legitimate business in participating economies without first obtaining a visa. While this term is not strictly defined in the current iteration of the APEC Framework, later versions of the framework may include such a definition. The United States does not currently participate in the pre-clearance aspect of the ABTC Program. Canada and the United States are currently transitional members and do not offer visa-free travel for ABTC holders unless they otherwise qualify for visa-free travel. The IFR published on May 13, 2014 includes a more detailed description of the two types of membership. 79 FR 27161, 27162.

[3] According to the IFR, standards for the ABTCs were set forth in the APEC Framework, dated October 2010. 79 FR 27161, 27162. At the time the IFR was published, the current version of the APEC Framework was Version 17, agreed to on January 30, 2013. 79 FR 27161, 27163 at n. 11. The APEC Framework is now current as Version 20, agreed to on February 26, 2018. Any subsequent revisions to the APEC Framework that directly affect the U.S. ABTC may require a regulatory change.

[4] In the case of Hong Kong China, this applies to its permanent residents who hold Hong Kong permanent identity cards.

[5] In the case of Hong Kong China, this applies to its permanent residents who hold a Hong Kong Special Administrative Region passport or a valid travel document issued by another country or territory.

[6] The IFR became effective on June 12, 2014. 79 FR 27161 (May 13, 2014).

[7] 81 FR 84403. As discussed in more detail below, the final rule adopted the interim amendments as final. Notwithstanding this, subsequent citations are to the IFR only, except where a citation to the final rule is necessary.

[8] In accordance with the APEC Framework, CBP noted that an APEC member may only issue ABTCs to its own citizens; thus, eligibility for the U.S. ABTC was limited to U.S. citizens. 79 FR 27161, 27162, 27174.

[9] DHS determined that other DHS trusted traveler programs such as FAST and TSA Precheck do not fit the parameters of the U.S. ABTC Program due to their vetting process and their inapplicability to international air travel.

[10] At the time the IFR and final rule were published, U.S. ABTC applications were accepted through CBP's Global Online Enrollment System (GOES) website. On October 1, 2017, CBP launched a new cloud-based website, the Trusted Traveler Programs (TTP) System, which replaced the Global Online Enrollment System (GOES). The TTP website can be accessed at *https://ttp.cbp.dhs.gov/.*

with the APEC Framework, CBP issued U.S. ABTCs valid for three years or until the expiration date of the card holder's passport (if earlier), provided the card holder's participation in the program was not revoked by CBP prior to the end of the period. On November 23, 2016, DHS adopted the interim amendments as final, albeit with two changes: The final rule amended the validity period of U.S. ABTCs to five years in conformity with revisions to the APEC Framework, and removed all references in the regulations to suspension from the program because CBP does not use suspension as a remedial action. 81 FR 84403.

(ii) APEC Act of 2017

The APEC Act of 2017 became law on November 2, 2017. Public Law 115–79, 131 Stat. 1258. The APEC Act of 2017 replaced the APEC Act of 2011, setting forth, without changing, the general eligibility requirements for the U.S. ABTC and making the U.S. ABTC Program permanent. *Id.* In comparison with the APEC Act of 2011, the APEC Act of 2017 provides more specific details on eligibility and incorporates certain definitions of terms that were originally set forth in the IFR and regulations that implemented the APEC Act of 2011.

Although certain differences exist between the APEC Act of 2011 and the APEC Act of 2017, in most cases, these differences are consistent with the current regulations and therefore do not warrant a change in the regulations. For example, the APEC Act of 2017 now specifies U.S. citizenship in the eligibility criteria for U.S. ABTCs, whereas the APEC Act of 2011 did not. However, the IFR had clarified the eligibility criteria to include U.S. citizenship based on the criteria set forth in the APEC Framework. Since the regulations limit eligibility to U.S. citizens, the inclusion of this requirement in the APEC Act of 2017 does not warrant a change in the regulations. Similarly, the APEC Act of 2017 provides that U.S. ABTCs may be issued to individuals who are ''engaged in business'' in the APEC region and U.S. Government officials ''actively engaged in [APEC] business.'' Public Law 115–79. This language is consistent with the eligibility requirements set forth in the APEC Framework. In contrast, the APEC Act of 2011 had described as eligible ''business leaders and United States Government officials who are actively engaged in [APEC] business.'' Public Law 112–54, 125 Stat. 550. The IFR implementing the APEC Act of 2011 had retained the distinction made in the APEC Framework, which is now made clearer in the APEC Act of 2017. As such, no amendment to the regulations is necessary as a result of this change. Finally, the APEC Act of 2017 specifically vested authority for implementing the program with the Commissioner of CBP, where previously, in the APEC Act of 2011, such authority had been vested in the Secretary of Homeland Security. As the IFR was issued jointly by CBP and DHS, no change to the regulations is required *per se*.[11]

Two specific differences between the APEC Act of 2017 and the APEC Act of 2011 do require modifications to the regulations: (1) The inclusion of a definition for ''trusted traveler program'' in the APEC Act of 2017, and (2) the provision within the APEC Act of 2017 that makes the U.S. ABTC Program an ongoing program. The APEC Act of 2017 provides that, solely for the purposes of the U.S. ABTC Program, ''the term 'trusted traveler program' means a voluntary program of the Department that allows U.S. Customs and Border Protection to expedite clearance of pre-approved, low-risk travelers arriving in the United States''; no such definition was included in the APEC Act of 2011. Public Law 115–79; Public Law 112–54, 125 Stat. 54. DHS is incorporating this definition into the regulations. We note that as this definition is consistent with CBP's previous interpretation, its inclusion in the regulations does not necessitate a change in the CBP trusted traveler programs deemed compatible with the U.S. ABTC Program. The Global Entry, SENTRI, and NEXUS trusted traveler programs meet this definition and will continue to be the applicable trusted traveler programs for purposes of the ABTC regulations.[12] Additionally, the APEC Act of 2017 makes the U.S. ABTC Program an ongoing program and the regulations are amended accordingly, as discussed in the section below.

The regulations contained at 8 CFR 235.13, as revised, remain critical to the implementation of the U.S. ABTC Program as they set forth specific application, renewal and redress procedures not contained in the APEC Act of 2017, and they define terms used, but not defined, in the APEC Act of 2017.

II. Discussion of Regulatory Changes

Section 235.13(b)(1) sets forth the eligibility criteria for participation in the U.S. ABTC Program. This same section provides definitions for terms and phrases used in the relevant statutory and regulatory provisions. This document revises § 235.13(b)(1)(ii) by incorporating the definition of ''trusted traveler program'' included in the APEC Act of 2017.

In the final rule establishing the regulations governing the U.S. ABTC Program, DHS removed references to suspension of previously issued cards as CBP does not use suspension as a remedial action. One reference to suspension inadvertently remained in the regulations, at 8 CFR 235.13(g). This document corrects the error by removing the remaining reference to suspension. Additionally, this document corrects an inadvertent editorial error in § 235.13(g)(1) by adding a space between the words ''removal'' and ''by''.

Section 235.13(h) concerns the duration of the U.S. ABTC Program and provides that DHS will issue ABTCs through September 30, 2018. The APEC Act of 2017 makes the ABTC Program ongoing. Public Law 115–79, 131 Stat. 1258. Therefore, § 235.13(h) is no longer necessary. This document removes the now-obsolete provision. In light of the savings clause in section 4(b)(2) of the APEC Act of 2017, any ABTCs issued pursuant to the APEC Act of 2011 remain valid until their stated expiration date unless otherwise revoked.

III. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) generally requires that agencies publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. *See* 5 U.S.C. 553(b) and (c). However, there are certain exceptions to this rule.

The APA provides an exception from notice and comment procedures when an agency finds for good cause that those procedures are ''impracticable, unnecessary, or contrary to the public

[11] The APEC Act of 2017 also does not provide the Commissioner of CBP with authority to terminate the U.S. ABTC Program. Previously, pursuant to the APEC Act of 2011, the Secretary of Homeland Security had such authority, provided that termination was determined to be in the interest of the United States. As there is no provision regarding termination in the regulations, no change or amendment is required.

[12] CBP does not consider the FAST and TSA Precheck programs to meet the statutory definition. The FAST program is a commercial clearance program for known low-risk commercial shipments entering the United States from Canada and Mexico. FAST has its own vetting process and focuses more specifically on the business of highway carriers using trucks to transport cargo into the United States rather than on low-risk travelers in general. The TSA Precheck program does not deem an individual low-risk for CBP inspectional purposes. It facilitates pre-flight aviation security screening of travelers boarding flights within and departing the United States on U.S. carriers.

interest.'' *See* 5 U.S.C. 553(b)(3)(B). In this case, CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary because the conforming amendments and minor non-substantive edits set forth in this document are required to ensure that the regulation reflects changes to the underlying statutory authority affected by the APEC Act of 2017 and to remove a minor inadvertent error. For this same reason, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

IV. Statutory and Regulatory Requirements

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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 12866 section 3(f) provides criteria for what constitutes ''significant regulatory action'' and Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs, and provides that for each new regulation issued, two prior regulations must be identified for elimination. Executive Order 13771 also requires that agencies prudently manage and control the cost of planned regulations through a budgeting process. As these amendments to the regulations are conforming amendments to reflect statutory changes and to make minor non-substantive edits, they do not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866, and as supplemented by Executive Order 13563. Accordingly, OMB has not reviewed this regulation. Further, as this rule is not a significant regulatory action, it is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum titled ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 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. The collections of information in this final rule are approved in accordance with the requirements of the Paperwork Reduction Act under control number 1651–0121. There are no changes being made to the information collection as a result of this final rule.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth above, 8 CFR part 235 is amended as set forth below.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 1. The authority citations for part 235 is revised to read as follows:

Authority: 6 U.S.C. 218 and note; 8 U.S.C. 1101 and note, 1103, 1158, 1182, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2004 Comp., p.278), 1185 note, 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 48 U.S.C. 1806 and note.

■ 2. Amend § 235.13 as follows:

■ a. Revise paragraph (b)(1)(ii);

■ b. In paragraph (g) introductory text, remove the words ''suspended or'' in the first sentence;

■ c. In the first sentence of paragraph (g)(1), add a space between the words ''removal'' and ''by''; and

■ d. Remove paragraph (h).

The revision reads as follows:

§ 235.13 U.S. Asia-Pacific Economic Cooperation Business Travel Card Program.

* * * * *

(b) * * *

(1) * * *

(ii) An existing member in good standing of a CBP trusted traveler program or approved for membership in a CBP trusted traveler program during the application process described in paragraph (c) of this section. For the purpose of this section only, ''trusted traveler program'' is defined as a voluntary program of the Department that allows U.S. Customs and Border Protection to expedite clearance of pre-approved, low-risk travelers arriving in the United States; and

* * * * *

Dated: May 24, 2019.

Kevin K. McAleenan,

Acting Secretary.

[FR Doc. 2019–12301 Filed 6–13–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2019–0197]

Airworthiness Criteria: Glider Design Criteria for Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASK 21 B Glider

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Issuance of final airworthiness design criteria.

SUMMARY: These airworthiness design criteria are issued to Alexander Schleicher GmbH & Co. Segelflugzeugbau for the Model ASK 21 B glider. The administrator finds the design criteria, which make up the certification basis for the Model ASK 21 B glider, acceptable.

DATES: These airworthiness design criteria are effective July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Rutherford, AIR–692, Federal Aviation Administration, Policy & Innovation Division, Small Airplane Standards Branch, 901 Locust, Room 301, Kansas City, MO 64106, telephone (816) 329–4165, FAX (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2018, Alexander Schleicher GmbH & Co. Segelflugzeugbau (Alexander

Schleicher) applied for validation of a type certificate change to add the Model ASK 21 B glider in accordance with the ''Technical Implementation Procedures for Airworthiness and Environmental Certification Between the FAA and the European Aviation Safety Agency (EASA),'' Revision 6, dated September 22, 2017. This model is a modified version of the Model ASK 21 glider and will be documented on existing Type Certificate Number (No.) G47EU. The Model ASK 21 B is a two-seat, mid-wing glider constructed from glass-fiber reinforced plastic and features a 55.8 foot (17 meters) wingspan with airbrakes on the upper wing surface. The glider has a non-retractable landing gear with a nose wheel and shock-absorbed, braked main wheel and a T-type tailplane. The glider has a maximum weight of 1,323 pounds (600 kilograms).

EASA type certificated the Model ASK 21 B glider in the utility and aerobatic categories and issued Type Certificate No. EASA.A.221, dated August 9, 2018. The associated EASA Type Certificate Data Sheet (TCDS) No. EASA.A.221 defined the certification basis, which Alexander Schleicher submitted to the FAA for review and acceptance.

Gliders are type certificated by the FAA as special class aircraft for which airworthiness standards have not yet been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those found by the FAA to be appropriate and applicable to the specific type design. FAA Advisory Circular (AC) 21.17–2A [1] provides guidance on acceptable design criteria for the type certification of gliders and powered gliders in the United States. AC 21.17–2A allows applicants to utilize the Joint Aviation Requirements (JAR)–22,[2] other airworthiness criteria comparable to 14 CFR part 23, or a combination of both as the means for showing compliance for glider certification.

Comments

Airworthiness Criteria: Glider Design Criteria for Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASK 21 B Glider was published in the **Federal Register** on April 2, 2019 (84 FR 12529). No comments were received and the airworthiness design criteria are adopted as proposed.

Type Certification Basis

The certification basis for the Model ASK 21 B will be the same as the certification basis for the Model ASK 21 as shown on TCDS No. G47EU, Revision 1, except for areas affected by the change, which will use EASA Certification Specification (CS)–22 [3] as shown in these airworthiness design criteria.

Citation

The authority citation for these airworthiness design criteria is as follows:

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

The Airworthiness Design Criteria

Applicable Airworthiness Criteria Under 14 CFR 21.17(b)

Based on the Special Class provisions of § 21.17(b), the following airworthiness requirements form the FAA certification basis for the Model ASK 21 B:

1. 14 CFR part 21, effective February 1, 1965, including amendments 21–1 through 21–53.

2. Lufttuechtigkeitsforderungen fuer Segelflugzeuge and Motorsegler (LFSM) Airworthiness Requirements for Sailplanes and Powered Sailplanes, dated October 23, 1975.

3. JAR–22, dated April 1, 1980, including amendment 1, dated May 18, 1981.

4. CS–22, amendment 2, dated March 5, 2009, for the following regulations: CS 22.147, 22.455, 22.477, 22.561 except (b)(2), 22.595, 22.597, 22.629, 22.677, 22.685, 22.689, 22.721, 22.771, 22.773, 22.777, 22.779, 22.780, 22.781, 22.785, 22.786, 22.787, 22.788, 22.807, and 22.831.

5. AC 21.23–1, section 5(e)(6), dated January 12, 1981.

6. Operations are limited to Day VFR and to flying in Instrument Meteorological Conditions (IMC) if the glider is equipped as required under 14 CFR 91.205. Night operation is prohibited.

7. FAA Type Certificate Application Date: August 16, 2018.

8. EASA Type Certificate No. EASA.A.221, Issue 05, dated August 9, 2018.

Issued in Kansas City, Missouri, on June 5, 2019.

Pat Mullen,

Manager, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–12626 Filed 6–13–19; 8:45 am]

BILLING CODE 4910–13–P

[1] *Ref* AC 21.17–2A, ''Type Certification—Fixed-Wing Gliders (Sailplanes), Including Powered Gliders,'' dated February 10, 1993.

[2] *Ref* JAR–22, ''Sailplanes and Powered Sailplanes.''

[3] *Ref* EASA CS–22, ''Certification Specifications for Sailplanes and Powered Sailplanes,'' amendment 2, dated March 5, 2009.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–86073; File No. S7–21–18]

RIN 3235–AM47

Amendment to Single Issuer Exemption for Broker-Dealers

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to an exemptive provision in the broker-dealer annual reporting rule under the Securities Exchange Act of 1934 (''Exchange Act''). The exemption provides that a broker-dealer is not required to engage an independent public accountant to certify the broker-dealer's annual reports filed with the Commission if, among other things, the securities business of the broker-dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.

DATES: *Effective Date:* August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Timothy C. Fox, Branch Chief, at (202) 551–5687; or Rose Russo Wells, Special Counsel, at (202) 551–5527, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is amending 17 CFR 240.17a–5 (''Rule 17a–5'').

I. Final Rule Amendment

Most broker-dealers registered with the Commission must annually file with the Commission a financial report and either a compliance report or exemption report.[1] In addition, paragraph

[1] 15 U.S.C. 78q(a)(1); 15 U.S.C. 78q(e)(1)(A); paragraph (d) of Rule 17a–5. *See also* paragraphs (d)(1)(iii) and (iv) of Rule 17a-5 (setting forth the limited circumstances under which the annual reports need not be filed). Pursuant to paragraphs (d)(1)(i)(B)(*1*) and (*2*) of Rule 17a–5, a broker-dealer

(d)(1)(i)(C) of Rule 17a–5 requires the broker-dealer to include with the annual reports reports prepared by an independent public accountant covering the financial report and, as applicable, the compliance or exemption report.[2] The accountant must be qualified and independent in accordance with 17 CFR 210.2–01 (''Rule 2–01 of Regulation S–X'') and must be registered with the Public Company Accounting Oversight Board (''PCAOB'') if required by the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'').[3] However, paragraph (e)(1)(i)(A) of Rule 17a–5 exempts a broker-dealer from engaging an independent public accountant to provide the accountant's reports if, since the date of the registration of the broker-dealer with the Commission or of the previous annual reports filed with the Commission:

- The securities business of the broker-dealer has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of the issuer;
- The broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction; and
- The broker has not otherwise held funds or securities for or owed money or securities to customers.

In September 2018, the Commission proposed amending this exemption to correct an error that inadvertently amended the rule in 2013 and to clarify that the exemption is available only for a broker-dealer that acts as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.[4] More particularly, the 2018 proposal followed a series of amendments to the exemption, which occurred in 1975, 1977, and 2013, that inadvertently resulted in the rule text providing that the exemption applies if the broker-dealer solicited subscriptions for ''the issuer'' rather than for ''an issuer.''[5]

The Commission received two comment letters in response to the proposed amendment to this exemptive provision.[6] The first commenter did not address the proposed amendment.[7] The second commenter stated that it was a ''one-person sole proprietorship,'' that the ''only business conducted is acting as an agent for redeemable mutual funds and variable insurance products,'' that the ''firm does not engage in underwriting, nor does the firm hold or owe customer funds or securities,'' that ''[c]ustomer checks are made payable to the mutual fund or insurance company,'' and that ''[a]pplications and checks are promptly sent to the company.''[8] The commenter stated that the proposed amendment ''would block the use of the exemption for firms that do not hold or owe customer funds or securities and act as an agent for mutual funds,'' that it ''forces limited business firms, operating under a SEC Rule 15c3–3 exemption, to hire a PCAOB-registered accountant,'' that for ''a small firm . . . the cost of compliance is an onerous burden,'' and that ''increased PCAOB requirements make the cost unaffordable for the firm.'' The commenter stated that the ''firm provides personalized service to customers and has a valuable place in the community of broker-dealers.'' For these reasons, the commenter ''request[ed] that the proposed regulation be amended to allow such limited business firms [such as the commenter's firm] to file an annual report prepared by an independent public accountant (CPA), but not necessarily registered with the [PCAOB].''

In response to the commenter's request, the Commission notes that the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 that was proposed to be modified in this rulemaking addresses whether a broker-dealer must comply with paragraph (d)(1)(i)(C) of the rule, which requires the broker-dealer to file reports prepared by an independent public accountant with its annual reports. The Commission's proposal did not address the requirement that the independent public accountant must be registered with the PCAOB, which is prescribed in Section 17(e)(1)(A) of the Exchange Act and paragraph (f)(1) of Rule 17a–5. The proposal also did not address the requirement that the independent public accountant must undertake to prepare the reports in accordance with PCAOB standards, which is prescribed in paragraph (g) of Rule 17a–5. The commenter's request, consequently, asks the Commission to create a new and different exemption. In particular, the commenter requests that the Commission create an exemption pursuant to which a broker-dealer engaged in the business described in the comment letter would be exempt from the requirements in Section 17(e)(1)(A) of the Exchange Act and paragraph (f)(1) of Rule 17a–5 to the extent they require that the broker-dealer's independent public accountant be registered with the PCAOB. The proposed amendment that is the subject of this rulemaking would not alter these requirements, nor did the Commission contemplate doing so in the Proposing Release. For these reasons, the commenter's request ''that the proposed regulation be amended to allow such limited business firms to file an annual report prepared by an independent public accountant (CPA), but not necessarily registered with the [PCAOB]'' is beyond the scope of this rulemaking.[9]

The Commission understands that the comment letter addresses only the PCAOB-registration component of the audit requirement. Nonetheless, the Commission recognizes that this commenter in a separate Commission adjudicatory proceeding took the view that the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 should cover a broker-dealer acting as an agent for multiple issuers (which would exempt such broker-dealers from the audit requirement entirely).[10] Accordingly, the Commission believes that it is appropriate to address in the context of this rulemaking why the Commission does not believe that an expansion of the exemption to include broker-dealers

that does not claim it was exempt from 17 CFR 240.15c3–3 (''Rule 15c3–3'') throughout the most recent fiscal year must file the compliance report, and a broker-dealer that claims it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file the exemption report. The compliance report must contain statements about the broker-dealer's internal control over, and compliance with, certain financial responsibility rules. The exemption report must contain statements about the broker-dealer's exemption from Rule 15c3–3.

[2] *See* 17 CFR 240.17a–5(d)(1)(i)(C).

[3] Public Law 107–204, 116 Stat. 745 (2002). *See* 17 CFR 240.17a–5(f)(1).

[4] *See Amendment to Single Issuer Exemption for Broker-Dealers,* Exchange Act Release No. 84225 (Sept. 20, 2018), 83 FR 48733 (Sept. 27, 2018) (''*Proposing Release*''). *See also Broker-Dealer Reports,* Exchange Act Release No. 70073 (Jul. 30, 2013), 78 FR 51910, 51943 (Aug. 21, 2013).

[5] *See Proposing Release* 83 FR at 48734 (describing the series of events that led to the inadvertent amendment to the rule).

[6] The comment letters are available at *https://www.sec.gov/comments/s7-21-18/s72118.htm.*

[7] *See Letter from Amr A Daoud,* dated Sept. 24, 2018.

[8] *See Letter from Howard Feigenbaum,* dated Oct. 24, 2018 (''*Feigenbaum Letter*'').

[9] The Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions stated that ''[t]he Office of the Chief Accountant and the Division of Trading and Markets are considering recommending amendments to certain broker-dealer annual reporting, audit and notification requirements that could differentiate the requirements according to different classes of broker-dealers.'' *See* Commission, *Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions. Available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=3235-AM46.* The potential issues involved in adopting such an approach as the commenter recommends, as well as the scope and form such potential action could take, would likely involve various policy issues that would warrant careful consideration following public comment.

[10] *See In the Matter of the Application of Sharemaster,* Exchange Act Release No. 83138 (Apr. 30, 2018).

that provide broker-dealer services for more than a single issuer (even if the broker-dealer limits its business in the manner described in the comment letter) would be appropriate.

The annual reports a broker-dealer files with the Commission are used by the Commission and the broker-dealer's designated examining authority to monitor the financial and operational condition of the broker-dealer and are one of the primary means of monitoring compliance with the Commission's broker-dealer financial responsibility rules. The requirement that the annual reports be covered by reports prepared by an independent public accountant is intended to enhance the reliability of the information filed by the broker-dealer, including information relevant to its financial condition, ability to continue as a going concern, and its handling of customer securities and cash. This also benefits investors who are customers or potential customers of the broker-dealer and who do not have access to the same level of information about the financial condition and operations of the broker-dealer as the independent public accountant engaged by the broker-dealer. These investors rely on the independent public accountant to audit this information.

The limited exemption to the requirement that a broker-dealer's annual reports be audited by an independent public accountant is consistent with the objectives of the rule. The exemption applies to a broker-dealer that acts as broker (agent) for a single entity—an issuer that is typically affiliated with the broker-dealer. Therefore, the issuer is in a privileged position to access sufficient information about the financial condition and operations of its agent—the broker-dealer affiliate—to make an informed decision about continuing to use the broker-dealer to effect transactions in its securities. Moreover, by permitting the broker-dealer to act as its agent, the issuer has agreed that the broker-dealer can legally bind the issuer. This implies that the two entities have a special relationship. For these reasons, requiring that an independent public accountant audit this information would not provide a meaningful benefit to the issuer, and the risk of harm to the issuer is mitigated by its ability to access information about its agent.

Expanding this exemption to broker-dealers similarly situated to the commenter's firm would not be consistent with the objectives of Rule 17a–5 as described above. The comment letter describes a firm that sells ''redeemable mutual funds and variable insurance products'' and that in doing so ''[c]ustomer checks are made payable to the mutual fund or insurance company'' and states that ''[a]pplications and checks are promptly sent to the company.'' [11] The comment letter also stated that the firm ''provides personalized service to customers.'' In other words, the business described in the comment letter involves acting on behalf of, and selling securities and insurance products to, retail investors. These customers are not similarly situated to an issuer that is affiliated with a broker-dealer and for whom the broker-dealer is acting as agent. Unlike such an issuer, the customers do not have a privileged position that allows them to access sufficient information about the financial condition and operations of the broker-dealer to make an informed decision about continuing to use the broker-dealer to act on their behalf in purchasing securities, including entrusting the broker-dealer to promptly forward their checks. Moreover, selling the securities of multiple issuers, including mutual funds in a single family of mutual funds, is different from acting as agent for a single affiliated issuer. These issuers may not be in the privileged position of the affiliated issuer in terms of accessing information about the broker-dealer. Consequently, the Commission believes that this type of broker-dealer should continue to be required to have its annual reports covered by reports prepared by an independent public accountant.

For the reasons described above and in the Proposing Release, the Commission is adopting the amendment to Rule 17a–5 as proposed.

II. Paperwork Reduction Act

The rule amendment clarifies the scope of an existing exemption available to certain broker-dealers from the requirement to file with the Commission reports prepared by an independent public accountant pursuant to paragraph (d)(1)(i)(C) of Rule 17a–5. As stated in the Proposing Release, the Commission believes that the amendment does not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act of 1995.[12] Accordingly, no information was submitted to the Office of Management and Budget for review.

The Commission did not receive any comments regarding its belief that the rule amendment would not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.

III. Economic Analysis

The Commission is mindful of the costs imposed by, and the benefits obtained from, its rules. As explained below, the Commission expects that the amendment will benefit issuers by helping ensure that broker-dealers do not inappropriately rely on the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. Whenever the Commission engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires the Commission to consider whether the action would promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, when engaged in rulemaking under the Exchange Act, Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The following analysis considers the potential economic effects that may result from the rule amendment, including the benefits and costs to market participants as well as the broader implications of the proposal for efficiency, competition, and capital formation.

Broker-dealers serve an important role in capital formation by performing numerous services, including with respect to the distribution of securities. Broker-dealer annual reports are one of the primary means of monitoring compliance with the Commission's broker-dealer financial responsibility rules, and the requirement that the annual reports be certified by a PCAOB-registered independent public accountant is intended to help enhance the reliability of the information filed by the broker-dealer. The exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 is designed to streamline regulatory compliance for certain broker-dealers by permitting broker-dealers that underwrite offerings by a single issuer—typically an affiliate of the broker-dealer—to do so without needing to meet this requirement.

Broker-dealers rarely rely on the very limited exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. Staff analysis of annual reports filed by broker-dealers revealed that only four broker-dealers—out of approximately 4,000 registered with the Commission—claimed the

[11] *Feigenbaum Letter.*

[12] 44 U.S.C. 3501 *et seq.*

exemption in the last year. The low level of use suggests that broker-dealers generally do not avail themselves of the existing exemption to compete with one another or to improve the efficiency of their underwriting activities.

The Commission recognizes the value of requiring that broker-dealer annual reports be certified by an independent public accountant. However, when a broker-dealer is acting solely as an agent for a single issuer's securities, typically an affiliate, the issuer is likely to have sufficient information about the broker-dealer's financial and operational condition. In that case, there would be minimal benefit in a requirement that the broker-dealer-dealer's annual reports be certified by an independent public accountant. At the same time, a broker-dealer required to obtain such certification for its annual reports could bear significant costs to do so. The Commission notes that one broker-dealer estimated the cost for a small broker-dealer to obtain certification of its annual reports by a PCAOB-registered independent public accountant in accordance with paragraph (d)(1)(i)(C) of Rule 17a–5 could be approximately $3,266 per year.[13]

While it is possible that a broker-dealer might act as an agent for a single unaffiliated issuer, the Commission does not believe such a narrow arrangement is likely. The Commission expects that a broker-dealer that is able to successfully market its services as an agent for the securities of one unaffiliated issuer would seek to market those services to additional unaffiliated issuers. In that case, the cost of having the firm's annual reports certified by a PCAOB-registered public accountant would likely be lower than the revenue generated from acting as an agent for multiple unaffiliated issuers.

However, in the event such an arrangement were to exist, the Commission acknowledges that the benefits associated with certification by an independent public accountant could be greater than when the broker-dealer is acting as agent for a single affiliated issuer. However, the incremental benefit likely would be limited because, even though the entities are not affiliated, they would likely have a special relationship by virtue of the fact that the broker-dealer's underwriting business relies on that single issuer. Therefore, the issuer likely would have better access to information relating to the broker-dealer's financial and operational condition than if the issuer were one of several issuers for whom the broker-dealer acted as agent. For these reasons, the Commission does not believe that the incremental benefit of requiring the annual reports to be certified by an independent public accountant would justify the costs in this scenario.

The Commission expects the amendment to benefit issuers that rely on broker-dealers to underwrite securities offerings by providing increased regulatory certainty about a broker-dealer's obligation to have its annual reports certified by an independent public accountant when the broker-dealer acts as an agent for multiple issuers. This will benefit issuers by helping ensure that broker-dealers do not inappropriately rely on the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. When the broker-dealer is not acting solely as an agent for a single affiliate's securities, the benefits of certification are likely to be more substantial because the issuers are less likely to have sufficient information about the broker-dealer's financial condition.

One commenter asserted that the cost of compliance with the separate requirements in Rule 17a–5 to engage an independent public accountant registered with the PCAOB (as compared to an accountant that is not registered with the PCAOB) represented an ''onerous burden'' for a firm that ''survives on a thin profit margin'' and that ''increased PCAOB requirements make the cost unaffordable for the firm.'' The Commisson acknowledges that the incremental costs associated with engaging an independent public accountant registered with the PCAOB as compared to an accountant that is not so registered could result in certain broker-dealers exiting the market if their revenues are too low to cover the incremental costs and remain profitable. However, as discussed above, the exemptive provision being modified in this rulemaking addresses whether or not the broker-dealer needs to file the accountant's reports (*i.e.,* engage an independent public accountant in the first place). It does not address the separate requirement in Rule 17a–5 that the accountant be registered with the PCAOB. With respect to the amendment being adopted in this rulemaking, the Commission continues to believe that because of the low reliance on the exemption currently, and the expectation that the number of broker-dealers relying on the exemption will not increase or decrease as a result of the amendment, the overall economic impact of the amendment is likely to be small.

The Commission expects the amendment to have only a marginal impact on efficiency, competition, and capital formation. This assessment is primarily based on the belief that the amendment does not revise the scope of the exemption or change current practice and that the exemption is claimed by only a few broker-dealers. The Commission nevertheless acknowledges that the amendment could marginally impair capital formation if it prompts broker-dealers to reduce underwriting activity or to increase the price of underwriting activities for potential issuers, and the amendment could marginally reduce efficiency if it prompts certain broker-dealers to exit the market, forcing issuers to move their business to a different broker-dealer.

The Commission considered several alternatives in terms of the scope of the exemption. First, the Commission considered broadening the scope of the exemption to include broker-dealers whose securities business is limited to acting as an agent for multiple issuers. Staff analysis of information provided by broker-dealers indicates that a substantial number of registered broker-dealers underwrite corporate securities or are selling group participants for corporate securities and may otherwise be eligible to take advantage of the exemption if its scope were broadened in this way.[14]

Relatedly, a commenter suggested that the Commission include an exemption for ''limited business broker-dealers'' from the requirement to engage a PCAOB-registered accountant (*i.e.,* an exemption that would permit the broker-dealer to engage an accountant that is not registered with the PCAOB). The commenter stated that it was a ''one-person sole proprietorship,'' that the ''only business conducted is acting as an agent for redeemable mutual funds and variable insurance products,'' that the ''firm does not engage in underwriting, nor does the firm hold or owe customer funds or securities,'' that ''[c]ustomer checks are made payable to the mutual fund or insurance company,'' and that ''[a]pplications and checks are promptly sent to the company.''

Rule 17a–5 provides only two exemptions from the requirement that

[13] According to one broker-dealer, an audit prepared by a PCAOB-registered accountant would cost $2,800 in 2010. *See In the Matter of the Application of Sharemaster,* Exchange Act Release No. 83138 (Apr. 30, 2018), at n. 4. Adjusting this amount for inflation yields approximately $3,266 in February 2019 (inflation calculator available at *https://www.bls.gov/data/inflation_calculator.htm*).

[14] Commission staff analysis of Form BD data indicates that 948 registered broker-dealers reported engaging in, or expecting to engage in, the underwriting of securities at the end of 2018.

broker-dealer annual reports be certified by an independent public accountant.[15] The Commission has provided for only these very limited exemptions from the requirement that annual reports of broker-dealers be audited due to the importance of reliable financial and operational information concerning registered broker-dealers for investor protection and the integrity of the capital markets. Broadening the exemption could benefit broker-dealers by no longer requiring them to engage independent public accountants when they act as an agent for multiple issuers in soliciting subscriptions for securities and thereby reducing their costs. However, an alternative that broadens these exceptions could impose costs on issuers to the extent that making the certification by the independent public accountant voluntary for broker-dealers that serve multiple issuers reduces the reliability of these broker-dealers' annual reports.

Further, an alternative that broadens the exemption to broker-dealers that limit their business in the manner described by the commenter would impact retail customers who are not similarly situated to an issuer that is affiliated with a broker-dealer and for whom the broker-dealer is acting as agent. Unlike such an issuer, the customers do not have a privileged position that allows them to access sufficient information about the financial condition and operations of the broker-dealer to make an informed decision about continuing to use the broker-dealer to act on their behalf in purchasing securities, including entrusting the broker-dealer to promptly forward their checks. Consequently, this alternative could impose costs on retail customers to the extent they currently rely on the reports of the independent public accountants.

Given the significance of the verification of a broker-dealer's financial and operational information by an independent public accountant, the Commission is not broadening the scope of the exemption to include broker-dealers whose securities business is limited to acting as an agent for multiple issuers. When a broker-dealer acts as an agent on behalf of an issuer, the financial condition of the broker-dealer is important to the issuer because if a broker-dealer is financially constrained, it may be less able to bear the risks associated with underwriting activities, such as holding securities in inventory. If a broker-dealer acts as an agent on behalf of multiple issuers, its financial condition is important to capital formation for multiple issuers, and so the benefits of certification are likely higher for the broker-dealer. Moreover, the Commission notes that the benefits to broker-dealers from such an alternative may be limited by competitive effects, because an issuer that is concerned about the reliability of a broker-dealer's financial statements may choose to hire a broker-dealer with certified annual reports to act as its agent.

Second, the Commission considered eliminating the exemption. While the Commission is mindful of the significance of broker-dealer audits, as explained above, the Commission believes that the cost of this alternative to broker-dealers who are now eligible to take advantage of the exemption does not justify the benefits that would accrue to the single issuer for which the broker-dealer is acting as agent, which is typically an affiliate of the broker-dealer, as a result of an audit. Therefore, the Commission believes the exemption should continue to be available where a broker-dealer is acting as an agent for a single issuer in soliciting subscriptions for securities of that issuer.

Finally, the Commission considered further specifying that the limited exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 would apply only if the broker-dealer were engaged in underwriting the securities of an affiliate. While this alternative would narrow the limited exemption, based on its observation of broker-dealers' use of this exemption to date, the Commission does not believe the benefits yielded by narrowing the exemption would be substantial.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[16] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[17] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have significant economic impact on a substantial number of small entities. In the proposing release, the Commission certified, under section 605(b) of the Regulatory Flexibility Act, that, when adopted, the proposed amendments to paragraph (e)(1)(i)(A) of Rule 17a–5 would not have a significant economic impact on a substantial number of small entities.[18]

Based on filings with the Commission, the Commission believes that four broker-dealers are currently claiming the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. The rule amendment will not change whether a broker-dealer would or would not qualify for the exemption. For these reasons, the Commission certifies that the rule amendment will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

V. Statutory Authority

The Commission is adopting amendments to Rule 17a–5 under the Exchange Act (17 CFR 240.17a–5) pursuant to the authority conferred by Exchange Act Sections 17(e)(1)(A), 17(e)(1)(C), and 36.[19]

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Rules

In accordance with the foregoing, the Commission is amending title 17, chapter II of the Code of Federal Regulation as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

■ 2. Amend § 240.17a–5 by revising paragraph (e)(1)(i)(A) to read as follows.

[15] One exemption is the ''single issuer'' exemption provided for in paragraph (e)(1)(i)(A) of Rule 17a–5, which is the subject of this rulemaking. The other exemption is contained in paragraph (e)(1)(i)(B) of Rule 17a–5. The second exemption applies to broker-dealers whose securities business is ''limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interests, and the broker or dealer has not carried any margin account, credit balance, or security for any securities customer.'' Staff analysis of annual reports filed by broker-dealers revealed that only one broker-dealer claimed this exemption in the last year.

[16] *See* 5 U.S.C. 601 *et seq.*

[17] 5 U.S.C. 551 *et seq.*

[18] *See Proposing Release,* 83 FR at 48737.

[19] 15 U.S.C. 78q(e)(1)(A); 15 U.S.C. 78q(e)(1)(C); 15 U.S.C. 78mm.

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(e) * * *

(1)(i) * * *

(A) The securities business of the broker or dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer, the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction, and the broker has not otherwise held funds or securities for or owed money or securities to customers; or

* * * * *

By the Commission

Dated: June 10, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–12563 Filed 6–13–19; 8:45 am]

BILLING CODE 8011–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe certain interest assumptions under the benefit payments regulation for plans with valuation dates in July 2019 and interest assumptions under the asset allocation regulation for plans with valuation dates in the third quarter of 2019. These interest assumptions are used for valuing benefits and paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 3829. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC's website (*https://www.pbgc.gov*).

Lump Sum Interest Assumption

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay as a lump sum. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for July 2019 measurement dates.

The July 2019 lump sum interest assumptions will be 0.75 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for June 2019, these assumptions represent a decrease of 0.25 percent in the immediate rate and are otherwise unchanged.

Valuation/Asset Allocation Interest Assumptions

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to value benefits for allocation purposes under section 4044 of ERISA, and some private-sector pension plans use them to determine benefit liabilities reportable under section 4044 of ERISA and for other purposes. The third quarter 2019 interest assumptions will be 2.92 percent for the first 25 years following the valuation date and 3.07 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2019, these interest assumptions represent an increase of five years in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.15 percent in the select rate, and an increase of 0.02 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC updates appendix B of the asset allocation regulation each quarter and appendices B and C of the benefit payments regulation each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available to value benefits and, for plans that rely on our publication of them each month or each quarter, to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during July 2019, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 309 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
309	7–1–19	8–1–19	0.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 309 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	
309	7–1–19	8–1–19	0.75	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, an entry for ''July–September 2019'' is added at the end of the table to read as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
*	*	*	*	*	*	*
July–September 2019	0.0292	1–25	0.0307	>25	N/A	N/A

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–12455 Filed 6–13–19; 8:45 am]

BILLING CODE 7709–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 560, 561, 566, 576, 583, 584, 588, 592, 594, 595, 597, and 598

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is issuing this final rule to adjust certain civil monetary penalties (CMPs) for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective:* June 14, 2019.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available from OFAC's website (*www.treasury.gov/ofac*).

Background

Section 4 of the Federal Civil Penalties Inflation Adjustment Act (1990 Pub. L. 101–410, 104 Stat. 890; 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321–373) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, 129 Stat. 599, 28 U.S.C. 2461 note) (collectively, the FCPIA Act), requires each federal agency with statutory authority to assess civil monetary penalties (CMPs) to adjust CMPs annually for inflation according to a formula described in section 5 of the FCPIA Act. One purpose of the FCPIA Act is to ensure that CMPs continue to maintain their deterrent effect through periodic cost-of-living based adjustments.

OFAC has adjusted its CMPs three times since the Federal Civil Penalties Inflation Adjustment Act Improvements Act went into effect on November 2, 2015: An initial catch-up adjustment on August 1, 2016 (81 FR 43070, July 1, 2016), and annual adjustments on February 10, 2017 (82 FR 10434, February 10, 2017), and March 19, 2018 (83 FR 11876, March 19, 2018).

Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the FCPIA Act. Under the FCPIA Act and the Office of Management and Budget guidance required by the FCPIA Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the Consumer Price Index for all Urban Consumers (''CPI–U'') for the October preceding the date of the adjustment and the prior year's October CPI–U. As set forth in Office of Management and Budget Memorandum M–19–04 of December 14, 2018, the adjustment multiplier for 2019 is 1.02522. In order to complete the 2019 annual adjustment, each current CMP is multiplied by the 2019 adjustment multiplier. Under the FCPIA Act, any increase in CMP must be rounded to the nearest multiple of $1.

New Penalty Amounts

OFAC currently is authorized to impose CMPs pursuant to five statutes: The Trading With the Enemy Act (50 U.S.C. 4301–4341, at 4315) (TWEA); the International Emergency Economic Powers Act (50 U.S.C. 1701–1706, at 1705) (IEEPA); the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132, 110 Stat. 1212–1319, at 1250; 18 U.S.C. 2339B) (AEDPA); the Foreign Narcotics Kingpin Designation Act (Pub. L. 106–120, 113 Stat. 1626–1636, at 1632; 21 U.S.C. 1901–1908, at 1906) (FNKDA); and the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631–637, at 634; 19 U.S.C. 3901–3913, at 3907) (CDTA).

The table below summarizes the existing and new maximum CMP amounts.

Statute	Existing maximum CMP amount	Maximum CMP amount effective June 14, 2019
TWEA	$86,976	$89,170
IEEPA	295,141	302,584
AEDPA	77,909	79,874
FNKDA	1,466,485	1,503,470
CDTA	13,333	13,669

In addition to updating these maximum CMP amounts, OFAC is also updating a reference to one-half the IEEPA maximum CMP from $147,571 to $151,292.

Public Participation

Because the amended regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of Executive Order 13771, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Parts 501, 510, 535, 536, 539, 541, 542, 544, 546, 547, 548, 549, 560, 561, 566, 576, 583, 584, 588, 592, 594, 595, 597, and 598

Administrative practice and procedure, Banks, Banking, Blocking of assets, Exports, Foreign trade, Licensing, Penalties, Sanctions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR chapter V as follows:

PART 501—REPORTING, PROCEDURES AND PENALTIES REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1189; 18 U.S.C. 2332d, 2339B; 19 U.S.C. 3901–3913; 21 U.S.C. 1901–1908; 22 U.S.C. 287c; 22 U.S.C. 2370(a), 6009, 6032, 7205; 28 U.S.C. 2461 note; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

Subpart D—Trading With the Enemy Act (TWEA) Penalties

§ 501.701 [Amended]

■ 2. Amend § 501.701 as follows:

■ a. Remove the note to paragraph (a)(1).

■ b. In paragraph (a)(3), remove ''$86,976'' and add in its place ''$89,170''.

■ 3. Amend appendix A to part 501 as follows:

■ a. In paragraph V.B.2.a.i., remove ''$147,571'' and add in its place ''$151,292'', and remove ''$295,141'' and add in its place ''$302,584''.

■ b. In paragraph V.B.2.a.ii., remove ''$295,141'' in all three locations where it appears, and add in its place in all three locations ''$302,584''.

■ c. Redesignate the note to paragraph (a) of section V.B.2.a. as paragraph V.B.2.a.v.

■ d. Revise newly redesignated paragraph V.B.2.a.v.

■ e. Designate the undesignated paragraph after newly redesignated paragraph V.B.2.a.v., which starts with ''The following Matrix represents the base amount of the proposed civil penalty'' and contains a table titled ''Base Penalty Matrix,'' as V.B.2.a.vi.

f. Revise newly redesignated paragraph V.B.2.a.vi.

The revisions read as follows:

Appendix A to Part 501—Economic Sanctions Enforcement Guidelines

* * * * *

V. * * *

B. * * *

2. * * *

a. * * *

v. The applicable statutory maximum civil penalty per violation for each statute enforced by OFAC is as follows: International Emergency Economic Powers Act (IEEPA)—greater of $302,584 or twice the amount of the underlying transaction; Trading with the Enemy Act (TWEA)—$89,170; Foreign Narcotics Kingpin Designation Act (FNKDA)—$1,503,470; Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)—greater of $79,874 or twice the amount of which a financial institution was required to retain possession or control; and Clean Diamond Trade Act (CDTA)—$13,669. The civil penalty amounts authorized under these statutes are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

vi. The following matrix represents the base amount of the proposed civil penalty for each category of violation:

BASE PENALTY MATRIX

Voluntary Self-Disclosure	Egregious Case: NO	Egregious Case: YES
YES	(1) One-Half of Transaction Value (capped at lesser of $151,292 or one-half of the applicable statutory maximum per violation)	(3) One-Half of Applicable Statutory Maximum
NO	(2) Applicable Schedule Amount (capped at lesser of $302,584 or the applicable statutory maximum per violation)	(4) Applicable Statutory Maximum

* * * * *

PART 510—NORTH KOREA SANCTIONS REGULATIONS

■ 4. The authority citation for part 510 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 114–122, 130 Stat. 93 (22 U.S.C. 9201–9255); Pub. L. 115–44, 131 Stat 886 (22 U.S.C. 9201 note); E.O. 13466, 73 FR 36787, June 27, 2008, 3 CFR, 2008 Comp., p. 195; E.O. 13551, 75 FR 53837, September 1, 2010; E.O. 13570, 76 FR 22291, April 20, 2011; E.O. 13687, 80 FR 819, January 6, 2015; E.O. 13722, 81 FR 14943, March 18, 2016; E.O. 13810, 82 FR 44705, September 25, 2017.

Subpart G—Penalties

§ 510.701 [Amended]

■ 5. Amend § 510.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate Note 1 to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

■ 6. The authority citation for part 535 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12170, 44 FR 65729, 3 CFR, 1979 Comp., p. 457; E.O. 12205, 45 FR 24099, 3 CFR, 1980 Comp., p. 248; E.O. 12211, 45 FR 26685, 3 CFR, 1980 Comp., p. 253; E.O. 12276, 46 FR 7913, 3 CFR, 1981 Comp., p. 104; E.O. 12279, 46 FR 7919, 3 CFR, 1981 Comp., p. 109; E.O. 12280, 46 FR 7921, 3 CFR, 1981 Comp., p. 110; E.O. 12281, 46 FR 7923, 3 CFR, 1981 Comp., p. 112; E.O. 12282, 46 FR 7925, 3 CFR, 1981 Comp., p. 113; E.O. 12283, 46 FR 7927, 3 CFR, 1981 Comp., p. 114; and E.O. 12294, 46 FR 14111, 3 CFR, 1981 Comp., p. 139.

Subpart G—Penalties

§ 535.701 [Amended]

■ 7. Amend § 535.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 536—NARCOTICS TRAFFICKING SANCTIONS REGULATIONS

■ 8. The authority citation for part 536 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

Subpart G—Penalties

§ 536.701 [Amended]

■ 9. Amend § 536.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 539—WEAPONS OF MASS DESTRUCTION TRADE CONTROL REGULATIONS

■ 10. The authority citation for part 539 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 2751–2799aa–2; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200.

Subpart G—Penalties

§ 539.701 [Amended]

■ 11. Amend § 539.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).

■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 541—ZIMBABWE SANCTIONS REGULATIONS

■ 12. The authority citation for part 541 continues to read as follows:

Authority: 3. U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13288, 68 FR 11457, 3 CFR, 2003 Comp., p. 186; E.O. 13391, 70 FR 71201, 3 CFR, 2005 Comp., p. 206; E.O. 13469, 73 FR 43841, 3 CFR, 2008 Comp., p. 1025

Subpart G—Penalties

§ 541.701 [Amended]

■ 13. Amend § 541.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 542—SYRIAN SANCTIONS REGULATIONS

■ 14. The authority citation for part 542 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1701 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

Subpart G—Penalties

§ 542.701 [Amended]

■ 15. Amend § 542.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 544—WEAPONS OF MASS DESTRUCTION PROLIFERATORS SANCTIONS REGULATIONS

■ 16. The authority citation for part 544 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Public Law 110–96, 121 Stat. 1011; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13094, 63 FR 40803, 3 CFR, 1998 Comp., p. 200; E.O. 13382, 70 FR 38567, 3 CFR, 2005 Comp., p. 170.

Subpart G—Penalties

§ 544.701 [Amended]

■ 17. Amend § 544.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 546—DARFUR SANCTIONS REGULATIONS

■ 18. The authority citation for part 546 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13067, 62 FR 59989, 3 CFR, 1997 Comp., p. 230; E.O. 13400, 71 FR 25483, 3 CFR, 2006 Comp., p. 220.

Subpart G—Penalties

§ 546.701 [Amended]

■ 19. Amend § 546.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 547—DEMOCRATIC REPUBLIC OF THE CONGO SANCTIONS REGULATIONS

■ 20. The authority citation for part 547 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13413, 71 FR 64105, 3 CFR, 2006 Comp., p. 247; E.O. 13671, 79 FR 39949, 3 CFR, 2015 Comp., p. 280.

Subpart G—Penalties

§ 547.701 [Amended]

■ 21. Amend § 547.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate Note 1 to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 548—BELARUS SANCTIONS REGULATIONS

■ 22. The authority citation for part 548 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13405, 71 FR 35485; 3 CFR, 2007 Comp., p. 231.

Subpart G—Penalties

§ 548.701 [Amended]

■ 23. Amend § 548.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 549—LEBANON SANCTIONS REGULATIONS

■ 24. The authority citation for part 549 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13441, 72 FR 43499, 3 CFR, 2008 Comp., p. 232.

Subpart G—Penalties

§ 549.701 [Amended]

■ 25. Amend § 549.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 560—IRANIAN TRANSACTIONS AND SANCTIONS REGULATIONS

■ 26. The authority citation for part 560 continues to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2339B, 2332d; 22 U.S.C. 2349aa–9; 22 U.S.C. 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Pub. L. 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Pub. L. 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217; E.O. 13599, 77 FR 6659, 3 CFR, 2012 Comp., p. 215; E.O. 13846, 83 FR 38939.

Subpart G—Penalties

§ 560.701 [Amended]

■ 27. Amend § 560.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 561—IRANIAN FINANCIAL SANCTIONS REGULATIONS

■ 28. The authority citation for part 561 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 111–195, 124 Stat. 1312 (22 U.S.C. 8501–8551); Pub. L. 112–81, 125 Stat. 1298 (22 U.S.C. 8513a); Pub. L. 112–158, 126 Stat. 1214 (22 U.S.C. 8701–8795); E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 13553, 75 FR 60567, 3 CFR, 2010 Comp., p. 253; E.O. 13599, 77 FR 6659, February 8, 2012; E.O. 13622, 77 FR 45897, August 2, 2012; E.O. 13628, 77 FR 62139, October 12, 2012.

Subpart G—Penalties

§ 561.701 [Amended]

■ 29. Amend § 561.701 as follow:
■ a. Redesignate the note to paragraph (a) as paragraph (a)(4).
■ b. In newly redesignated paragraph (a)(4), remove ''$295,141'' and add in its place ''$302,584''.

PART 566—HIZBALLAH FINANCIAL SANCTIONS REGULATIONS

■ 30. The authority citation for part 566 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 114–102.

Subpart G—Penalties

§ 566.701 [Amended]

■ 31. Amend § 566.701 as follows:
■ a. Redesignate paragraphs (b) through (e) as paragraphs (c) through (f).
■ b. Redesignate the note to paragraph (a) as paragraph (b).
■ c. In newly redesignated paragraph (b), remove ''$295,141'' and add in its place ''$302,584''.

PART 576—IRAQ STABILIZATION AND INSURGENCY SANCTIONS REGULATIONS

■ 32. The authority citation for part 576 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 110–96, 121 Stat. 1011; E.O. 13303, 68 FR 31931, 3 CFR, 2003 Comp., p. 227; E.O. 13315, 68 FR 52315, 3 CFR, 2003 Comp., p. 252; E.O. 13350, 69 FR 46055, 3 CFR, 2004 Comp., p. 196; E.O. 13364, 69 FR 70177, 3 CFR, 2004 Comp., p. 236; E.O. 13438, 72 FR 39719, 3 CFR, 2007 Comp., p. 224; E.O. 13668, 79 FR 31019, 3 CFR, 2014 Comp., p. 248.

Subpart G—Penalties

§ 576.701 [Amended]

■ 33. Amend § 576.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 583—GLOBAL MAGNITSKY SANCTIONS REGULATIONS

■ 34. The authority citation for part 583 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 114–328, Title XII, Subtitle F, 130 Stat. 2533 (22 U.S.C. 2656 note); E.O. 13818, 82 FR 60839, December 26, 2017.

■ 35. In § 583.701, add paragraph (c) to read as follows:

§ 583.701 Penalties and Findings of Violation.

* * * * *

(c) IEEPA provides for a maximum civil penalty not to exceed the greater of $302,584 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

PART 584—MAGNITSKY ACT SANCTIONS REGULATIONS

■ 36. The authority citation for part 584 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); Pub. L. 112–208, 126 Stat. 1502 (22 U.S.C. 5811 note).

§ 584.701 [Amended]

■ 37. Amend § 584.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 588—WESTERN BALKANS STABILIZATION REGULATIONS

■ 38. The authority citation for part 588 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1705 note); E.O. 13219, 66 FR 34777, 3 CFR, 2001 Comp., p. 778; E.O. 13304, 68 FR 32315, 3 CFR, 2004 Comp. p. 229.

Subpart G—Penalties

§ 588.701 [Amended]

■ 39. Amend § 588.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

■ 40. The authority citation for part 592 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901–3913); E.O. 13312, 68 FR 45151 3 CFR, 2003 Comp., p. 246.

Subpart F—Penalties

§ 592.601 [Amended]

■ 41. Amend § 592.601 as follows:
■ a. Redesignate paragraphs (a)(2) and (3) as paragraphs (a)(3) and (4).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).
■ c. In newly redesignated paragraph (a)(2) remove ''$13,333'' and add in its place ''$13,669''.

PART 594—GLOBAL TERRORISM SANCTIONS REGULATIONS

■ 42. The authority citation for part 594 continues to read as follows:

Authority: 3 U.S.C. 301; 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; Pub. L. 115–44, 131 Stat. 886 (22 U.S.C. 9401 *et seq.*), E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13268, 67 FR 44751, 3 CFR, 2002 Comp., p. 240; E.O. 13284, 68 FR 4075, 3 CFR, 2003 Comp., p. 161; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159.

Subpart G—Penalties

§ 594.701 [Amended]

■ 43. Amend § 594.701 as follows:
■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).
■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).

■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 595—TERRORISM SANCTIONS REGULATIONS

■ 44. The authority citation for part 595 continues to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 319; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13372, 70 FR 8499, 3 CFR, 2006 Comp., p. 159.

Subpart G—Penalties

§ 595.701 [Amended]

■ 45. Amend § 595.701 as follows:

■ a. Redesignate paragraph (a)(2) as paragraph (a)(3).

■ b. Redesignate the note to paragraph (a)(1) as paragraph (a)(2).

■ c. In newly redesignated paragraph (a)(2), remove ''$295,141'' and add in its place ''$302,584''.

PART 597—FOREIGN TERRORIST ORGANIZATIONS SANCTIONS REGULATIONS

■ 46. The authority citation for part 597 continues to read as follows:

Authority: 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–132, 110 Stat. 1214, 1248–53 (8 U.S.C. 1189, 18 U.S.C. 2339B).

Subpart G—Penalties

§ 597.701 [Amended]

■ 47. Amend § 597.701 as follows:

■ a. Redesignate the note to paragraph (b) as paragraph (b)(3).

■ b. In newly redesignated paragraph (b)(3), remove ''$77,909'' and add in its place ''$79,874''.

PART 598—FOREIGN NARCOTICS KINGPIN SANCTIONS REGULATIONS

■ 48. The authority citation for part 598 continues to read as follows:

Authority: 3 U.S.C. 301; 21 U.S.C. 1901–1908; 31 U.S.C. 321(b); Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note).

Subpart G—Penalties

§ 598.701 [Amended]

■ 49. Amend § 598.701 as follows:

■ a. Redesignate the note to paragraph (a)(3) as paragraph (a)(4).

■ b. In newly redesignated paragraph (a)(4), remove ''$1,466,485'' and add in its place ''$1,503,470''.

Dated: June 7, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–12475 Filed 6–13–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2019–0414]

Regattas and Marine Parades; Great Lakes Annual Marine Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various special local regulations for annual regattas and marine parades in the Captain of the Port Detroit zone. Enforcement of these regulations is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and after these regattas or marine parades. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and after regattas or marine parades.

DATES: The regulations in 33 CFR 100.911 will be enforced at specified dates and times between June 15, 2019, and September 1, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Tracy Girard, Prevention Department, telephone (313) 568–9564, email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the following special local regulations listed in 33 CFR part 100, Safety of Life on Navigable Waters, on the following dates and times:

(1) *§ 100.911(a)(4) Motor City Mile, Detroit, MI.* This special local regulation will be enforced from 6 a.m. to 12 p.m. on July 12, 2019.

(2) *§ 100.911(a)(7) St. Clair River Classic Power Boat Race, St. Clair, MI.* This special local regulation will be enforced from 8 a.m. to 8 p.m. each day from July 22, 2019 until July 28, 2019.

(3) *§ 100.911(a)(10) Bay City Grand Prix Powerboat Races, Bay City, MI.* This special local regulation will be enforced from 9:30 a.m. to 7 p.m. each day from June 23, 2019 until June 25, 2019.

(4) *§ 100.911(a)(13) Bay City Tall Ships Parade of Sail, Bay City, MI.* This special local regulation will be enforced from 11 a.m. to 7 p.m. on July 18, 2019.

(5) *§ 100.911(a)(5) Wyandotte Invites Rowing Event, Wyandotte, MI.* This special local regulation will be enforced from 8 a.m. to 12 p.m. on June 15, 2019.

(6) *§ 100.911(a)(12) Michigan Championships Swimming Event, Detroit, MI.* This special local regulation will be enforced from 7 a.m. to 11 p.m. on September 1, 2019.

(7) § 100.911(a)(8) Marine City Water Ski Show, Marine City, MI. This special local regulation will be enforced from 10 a.m. to 6 p.m. on August 3, 2019. In the case of inclement weather on August 3, 2019, this special local regulation will be enforced from 10 a.m. to 6 p.m. on August 4, 2019.

Special Local Regulations

In accordance with § 100.901, entry into, transiting, or anchoring within these regulated areas is prohibited unless authorized by the Coast Guard patrol commander (PATCOM). The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

Vessels permitted to enter this regulated area must operate at a no-wake speed and in a manner that will not endanger race participants or any other craft.

The PATCOM may direct the anchoring, mooring, or movement of any vessel within this regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from the area, a Notice of Violation for failure to comply, or both.

If it is deemed necessary for the protection of life and property, the PATCOM may terminate the marine event or the operation of any vessel within the regulated area.

In accordance with the general regulations in § 100.35 of this part, the Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.''

Under the provisions of 33 CFR 100.928, vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for event participants and safety craft. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions

given by the Coast Guard's on-scene representative or by event representatives during the event.

The ''on-scene representative'' of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port Detroit to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 16.

The rules in this section shall not apply to vessels participating in the event or to government vessels patrolling the regulated area in the performance of their assigned duties.

This document is issued under authority of 33 CFR 100.35 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these special local regulations need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 10, 2019.

Jeffrey W. Novak,

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

[FR Doc. 2019–12593 Filed 6–13–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0425]

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

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for annual marine events in the Captain of the Port Detroit zone. Enforcement of these zones is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these fireworks events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During each enforcement period, no person or vessel may enter the respective safety zone without permission of the Captain of the Port or his designated representative.

DATES: The regulations in 33 CFR 165.941, Table 1, will be enforced at various dates and times between 9:15 p.m. June 20, 2019 through 11 p.m. on September 1, 2019.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email Tracy Girard, Prevention Department, telephone (313)568–9564, email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Table 1, Safety Zones; Annual Events in the Captain of the Port Detroit Zone, at the following dates and times for the following events:

(1) *Bay-Rama Fish Fly Festival Fireworks, New Baltimore, MI.* The safety zone listed in § 165.941, Table 1(3), will be enforced from 10 p.m. to 10:30 p.m. on June 20, 2019. In the case of inclement weather on June 20, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on June 21, 2019.

(2) *Sigma Gamma Fireworks, Grosse Pointe Farms, MI.* The safety zone listed in § 165.941, Table 1(4), will be enforced from 10 p.m. to 10:30 p.m. on June 24, 2019. In the case of inclement weather on June 24, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on June 25, 2019.

(3) *Ford (formerly Target) Fireworks, Detroit, MI.* The first safety zone, listed in § 165.941, Table 1(6)(A), will be enforced from 8 a.m. on June 21, 2019 to 8 p.m. on June 24, 2019. The second safety zone, listed in § 165.941, Table 1(6)(B), will be enforced from 6 p.m. to 11:55 p.m. on June 24, 2019. The third safety zone listed in § 165.941, Table 1(6)(C), will be enforced from 7 p.m. to 11:59 p.m. on June 25, 2019. In the case of inclement weather on the scheduled day, this safety zone will be enforced on June 25, 2019 until 11:59 p.m.

(4) *Algonac Fireworks, Algonac, MI.* The safety zone listed in § 165.941, Table 1(7), will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2019. In the case of inclement weather on July 5, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 6, 2019.

(5) *Bay City Fireworks Festival, Bay City, MI.* The safety zone listed in § 165.941, Table 1(8), will be enforced from 10 p.m. to 11 p.m. on July 4, July 5, and July 6, 2019. In the case of inclement weather on any scheduled day, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 7, 2019.

(6) *Caseville Fireworks, Caseville, MI.* The safety zone listed in the § 165.941, Table 1(9), will be enforced from 9:45 p.m. to 10:30 p.m. on July 5, 2019.

(7) *Ecorse Fireworks, Ecorse, MI.* The safety zone listed in the § 165.941, Table 1(10), will be enforced from 9:30 p.m. to 10:30 p.m. on July 6, 2019. In the case of inclement weather on July 6, 2019, this safety zone will be enforced from 9:30 p.m. to 10:30 p.m. on July 7, 2019.

(8) *Grosse Ile Fireworks, Grosse Ile, MI.* The safety zone listed in the § 165.941, Table 1(11), will be enforced from 9:30 p.m. to 10:30 p.m. on July 6, 2019. In the case of inclement weather on July 6, 2019, this safety (a zone will be enforced from 9:30 p.m. to 10:30 p.m. on July 7, 2019.

(9) *Grosse Pointe Farms Fireworks, Grosse Pointe Farms, MI.* The safety zone listed in § 165.941, Table 1(12), will be enforced from 10 p.m. to 10:30 p.m. on June 29, 2019. In the case of inclement weather on June 29, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on June 30, 2019.

(10) *Grosse Pointe Yacht Club Fireworks, Grosse Pointe Shores, MI.* The safety zone listed in § 165.941, Table 1(13), will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2019.

(11) *Belle Maer Harbor Fireworks, Harrison Township, MI.* The safety zone listed in § 165.941, Table 1(15), will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2019.

(12) *Harrisville Fireworks, Harrisville, MI.* The safety zone listed in § 165.941, Table 1(16), will be enforced from 10 p.m. to 10:30 p.m. on July 6, 2019. In the case of inclement weather on July 6, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 7, 2019.

(13) *Lexington Independence Festival Fireworks, Lexington, MI.* The safety zone listed in § 165.941, Table 1(17), will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2019. In the case of inclement weather on July 5, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 6, 2019.

(14) *Oscoda Township Fireworks, Oscoda, MI.* The safety zone listed in § 165.941, Table 1(18), will be enforced from 10 p.m. to 10:30 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2019.

(15) *Port Austin Fireworks, Port Austin, MI.* The safety zone listed in § 165.941, Table 1(19), will be enforced

from 10 p.m. to 10:30 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2019.

(16) *Port Sanilac Fireworks, Port Sanilac, MI.* The safety zone listed in § 165.941, Table 1(20), will be enforced from 10 p.m. to 11 p.m. on July 6, 2019. In the case of inclement weather on July 6, 2019, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 7, 2019.

(17) *St. Clair Fireworks, St. Clair, MI.* The safety zone listed in § 165.941, Table 1(21), will be enforced from 10 p.m. to 10:45 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 5, 2019.

(18) *St. Clair Shores Fireworks, St. Clair Shores, MI.* The safety zone listed in § 165.941, Table 1(22), will be enforced from 9:15 p.m. to 9:45 p.m. on June 28, 2019. In the case of inclement weather on June 28, 2019, this safety zone will be enforced from 9:15 p.m. to 9:45 p.m. on June 29, 2019.

(19) *Tawas Fireworks, Tawas, MI.* The safety zone listed in § 165.941, Table 1(23), will be enforced from 10 p.m. to 11 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 5, 2019.

(20) *Arenac Fireworks, Au Gres, MI.* The safety zone listed in § 165.941, Table 1(24), will be enforced from 10 p.m. to 10:45 p.m. on July 6, 2019. In the case of inclement weather on July 6, 2019, this safety zone will be enforced from 10 p.m. to 10:45 p.m. on July 7, 2019.

(21) *Port Huron Blue Water Festival Fireworks, Port Huron, MI.* The safety zone listed in § 165.941, Table 1(27), will be enforced from 10 p.m. to 11 p.m. on July 18, 2019. In the case of inclement weather on July 18, 2019, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 19, 2019.

(22) *Detroit Symphony Orchestra Fireworks, Grosse Pointe Shores, MI.* The safety zone listed in § 165.941, Table 1(28), will be enforced from 10 p.m. to 11 p.m. on July 12 and July 13, 2019. In the case of inclement weather on July 12 or July 13, 2019, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 19, 2019.

(23) *Trenton Fireworks, Trenton, MI.* The safety zone listed in § 165.941, Table 1(29), will be enforced from 10 p.m. to 11 p.m. on July 4, 2019. In the case of inclement weather on July 4, 2019, this safety zone will be enforced from 10 p.m. to 11 p.m. on July 5, 2019.

(24) *Marine City Maritime Days Fireworks, Marine City,* MI. The safety zone listed in § 165.941, Table 1(33), will be enforced from 10 p.m. to 11 p.m. on August 2, 2019. In the case of inclement weather on August 2, 2019, this safety zone will be enforced from 10 p.m. to 11 p.m. on August 3, 2019.

(25) *Catawba Island Club Fireworks, Catawba Island, OH.* The safety zone listed in § 165.941, Table 1(41), will be enforced from 8 p.m. to 9:30 p.m. on July 5, 2019.

(26) *Lakeside July 4th Fireworks, Lakeside, OH.* The safety zone listed in § 165.941, Table 1(40), will be enforced from 9:45 p.m. to 10:15 p.m. on July 4, 2019 with an inclement weather date of July 5, 2019.

(27) *Annual Labor Day Weekend Fireworks Show, Catawba Island, OH.* The safety zone listed in § 165.941, Table 1(45), will be enforced from 8 p.m. to 9:30 p.m. on September 1, 2019.

(28) *Put-In-Bay Fourth of July Fireworks, Put-In-Bay, OH.* The safety zone listed in § 165.941, Table 1(36), will be enforced from 9 p.m. to 10:30 p.m. on July 4, 2019 with an inclement weather date of July 5, 2019.

(29) *Huron Riverfest Fireworks, Huron, OH.* The safety zone listed in § 165.941, Table 1(43), will be enforced between from 9:15 p.m. to 10:45 p.m. on July 12, 2019 with an inclement weather date of July 13, 2019.

(30) *Freedom Festival, Luna Pier, MI.* The safety zone listed in § 165.941, Table 1(38), will be enforced from 9 p.m. to 10:30 p.m. on June 29, 2019.

(31) *Red, White and Blues Bang Fireworks, Huron, OH.* The safety zone listed in § 165.941, Table 1(42), will be enforced between from 9:15 p.m. until 10:45 p.m. on July 6, 2019 with an inclement weather date of July 13, 2019.

(32) *Washington Township Firefighters Summerfest, Toledo, OH.* The safety zone listed in § 165.941, Table 1(35), will be enforced from 8 p.m. to 11 p.m. on June 22, 2019 with an inclement weather date of June 23, 2019.

(33) *Toledo 4th Fireworks, Toledo, OH.* The safety zone listed in § 165.941, Table 1(46), will be enforced from 8:30 p.m. to 10 p.m. on July 4, 2019 with an inclement weather date of July 5, 2019.

Under the provisions of § 165.23, entry into, transiting, or anchoring within these safety zones during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM or by calling (313) 568–9564. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This document is issued under authority of § 165.941, Table 1, and 5 U.S.C. 552 (a). If the Captain of the Port determines that any of these safety zones need not be enforced for the full duration stated in this document, he may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 10, 2019.

Jeffrey W. Novak,

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

[FR Doc. 2019–12598 Filed 6–13–19; 8:45 am]

BILLING CODE 9110–04–P

COMMISSION OF FINE ARTS

45 CFR Part 2105

Freedom of Information Act Regulations

AGENCY: Commission of Fine Arts.

ACTION: Final rule.

SUMMARY: This rule replaces the Commission of Fine Arts (CFA) Freedom of Information Act (FOIA) regulations, last updated in 1986, with regulations that incorporate FOIA-related mandates since the last update, including the FOIA Improvement Act of 2016.

DATES: This rule is effective June 14, 2019.

ADDRESSES: Please address comments concerning this rule to *foia@cfa.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Luebke, Secretary, (202) 504–2200.

SUPPLEMENTARY INFORMATION: As established by Congress in 1910, the Commission of Fine Arts (CFA) is a small independent advisory body made up of seven presidentially appointed ''well qualified judges of the arts'' whose primary role is architectural review of designs for buildings, parks, monuments and memorials erected by the Federal or District of Columbia governments in Washington, DC. In addition to architectural review, the Commission considers and advises on the designs for coins, medals, and U.S. memorials on foreign soil. The Commission also advises the District of

Columbia government on private building projects within the Georgetown Historic District, the Rock Creek Park perimeter, and the Monumental Core area. The Commission advises Congress, the President, Federal agencies, and the District of Columbia government on the general subjects of design, historic preservation, and on orderly planning on matters within its jurisdiction.

The Commission of Fine Arts routinely and promptly responds to requests from concerned citizens and interested parties to review a wide variety of agency documents. To this end, the staff regularly posts agendas for upcoming meetings and draft documents relevant to those meetings to the agency website (*https://www.cfa.gov/*). Agendas, meeting minutes, recommendation letters, and actions taken under the Shipstead-Luce and Old Georgetown Acts are posted on the website in a timely manner. In that same spirit of openness and transparency, the CFA strives to organize and fulfill Freedom of Information Act (FOIA) requests efficiently and expediently, within the perimeters of current legislation. The CFA published revised regulations to replace those published in 1986 and invited public commentary. Commentary was received, reviewed and incorporated into this final rule.

The Commission adopts the interim rule published in **Federal Register** on April 16, 2019, at 84 FR 15512, as final with changes. The changes were incorporated from the comments received on the interim rule and for the convenience of the reader, the Commission is setting out the part revised in its entirety. Comments received include identification of unnecessary repetition, clarification on fee categories specified in FOIA legislation, suggestions to highlight the availability of a FOIA Public Liaison and other minor copy and wording suggestions.

List of Subjects 45 CFR Part 2105

Administrative practice and procedure, Freedom of information.

For reasons stated in the preamble, the Commission of Fine Arts revises 45 CFR part 2105 to read as follows:

PART 2105—REQUIREMENTS FOR COMPLIANCE WITH THE FREEDOM OF INFORMATION ACT

Sec.

Subpart A—Introduction

2105.1 What should you know up front?
2105.2 What kinds of records are not covered by the regulations in this part?

Subpart B—How To Make a Request

2105.3 Where should you send a FOIA request?
2105.4 How should you describe the records you seek?
2105.5 How will fee information affect the processing of your request?
2105.6 What information should you include about your fee category?
2105.7 Can you ask for records to be disclosed in a particular form or format?
2105.8 What if your request seeks records about another person?
2105.9 May you ask for the processing of your request to be expedited?
2105.10 What contact information should your request include?

Subpart C—Processing Requests

2105.11 What should you know about how the Agency processes requests?
2105.12 How do consultations and referrals work?

Subpart D—Timing of Responses to Requests

2105.13 In what order are responses usually made?
2105.14 What is multitrack processing and how does it affect your request?
2105.15 What is the basic time limit for responding to a request?
2105.16 When can the Agency suspend the basic time limit?
2105.17 When may the Agency extend the basic time limit?
2105.18 When will expedited processing be provided and how will it affect your request?

Subpart E—Responses to Requests

2105.19 How will the Agency respond to requests?
2105.20 How will the Agency grant requests?
2105.21 When will the Agency deny a request or procedural benefits?
2105.22 How will the Agency deny requests?
2105.23 What if the requested records contain both exempt and nonexempt material?

Subpart F—Handling Confidential Information

2105.24 May submitters of possibly confidential information designate information as confidential when making submissions?
2105.25 When will the Agency notify a submitter of a request for their possibly confidential information?
2105.26 What information will the Agency include when it notifies a submitter of a request for their possibly confidential information?
2105.27 When will the Agency not notify a submitter of a request for their possibly confidential information?
2105.28 How and when may a submitter object to the disclosure of confidential information?
2105.29 What must a submitter include in a detailed Exemption 4 objection statement?
2105.30 How will the Agency consider the submitter's objections?
2105.31 What if the Agency determines it will disclose information over the submitter's objections?
2105.32 Will a submitter be notified of a FOIA lawsuit?
2105.33 Will you receive notification of activities involving the submitter?
2105.34 Can an Agency release information protected by Exemption 4?

Subpart G—Fees

2105.35 What general principles govern fees?
2105.36 What are the requester fee categories?
2105.37 How does your requester category affect the fees you are charged?
2105.38 How will fee amounts be determined?
2105.39 What search fees will you have to pay?
2105.40 What duplication fees will you have to pay?
2105.41 What review fees will you have to pay?
2105.42 What fees for other services will you have to pay?
2105.43 When will the Agency waive fees?
2105.44 When may you ask the Agency for a fee waiver?
2105.45 How will the Agency notify you if it denies your fee waiver request?
2105.46 How will the Agency evaluate your fee waiver request?
2105.47 When will you be notified of anticipated fees?
2105.48 When will the Agency require advance payment?
2105.49 What if the Agency needs clarification about fee issues?
2105.50 How will you be billed?
2105.51 How will the Agency collect fees owed?
2105.52 When will the Agency combine or aggregate requests?
2105.53 What if other statutes require the Agency to charge fees?

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Authority: 5 U.S.C. 552, as amended by Public Law 110–175, 121 Stat. 2524 and Pub. L. 114–185, 130 Stat. 538.

Subpart A—Introduction

§ 2105.1 What should you know up front?

(a) This part contains the rules that the Agency follows in processing records under the Freedom of Information Act (FOIA), 5 U.S.C. 552.

(b) Definitions of terms used in this part are found at § 2105.67.

(c) This part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.

(d) This part does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

(e) You are encouraged to review the Agency's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

§ 2105.2 What kinds of records are not covered by the regulations in this part?

In the event that the Agency identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the agency must confer with legal counsel and the Department of Justice, Office of Information Policy, to obtain approval to apply the exclusion.

Subpart B—How To Make a Request

§ 2105.3 Where should you send a FOIA request?

(a) To make a request for Agency records, you must contact the Agency directly.

(b) Address requests to the FOIA Officer found in the Agency contacts at *https://www.cfa.gov/foia.*

§ 2105.4 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable Agency personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the Agency in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). For example, whenever possible, identify:

(1) The date, title or name, author, recipient, and subject of any particular records you seek;

(2) The office that created the records you seek;

(3) The timeframe for which you are seeking records; and

(4) Any other information that will assist the Agency in locating the records.

(c) The Agency's FOIA Officer or Public Liaison can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

(d) If the Agency determines that your request does not reasonably describe the records sought, the Agency will inform you what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. The Agency will also notify you that it will not be able to comply with your request unless the additional information it has requested is received from you in writing within 20 workdays after the Agency has requested it and that you may appeal its determination. If you receive this type of notification, you may wish to discuss it with the Agency's designated FOIA contact or the FOIA Public Liaison (*see* § 2105.63). If the Agency does not receive your written response containing the additional information within 20 workdays after the Agency has requested it, the Agency will presume that you are no longer interested in the records and will close the file on the request.

§ 2105.5 How will fee information affect the processing of your request?

(a) Your request should state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If the Agency anticipates that the fees for processing the request will exceed the amount you have agreed to pay, or if you did not agree in writing to pay processing fees or request a fee waiver and the Agency anticipates the processing costs will exceed $50 (*see* § 2105.35(g)) or will exceed your entitlements (*see* § 2105.37), the Agency will notify you:

(1) Of the estimated processing fees;

(2) Of its need for either an advance payment (*see* § 2105.48) or your written assurance that you will pay the anticipated fees (or fees up to a specified amount); and

(3) That it will not be able to fully comply with your request unless you provide a fee waiver request and/or the requested written assurance or advance payment.

(c) If the Agency does not receive a written response from you within 20 workdays after requesting the information in paragraph (b) of this section, it will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include a justification that addresses and meets the criteria in §§ 2105.43 and 2105.46. Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the Agency to process the request for records while it considers your fee waiver request.

(e) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver, you will receive an appropriate refund.

§ 2105.6 What information should you include about your fee category?

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester as described in §§ 2105.36 and 2105.37).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the Agency will determine the fee category by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the Agency may ask you for additional information (*see* § 2105.49).

§ 2105.7 Can you ask for records to be disclosed in a particular form or format?

(a) Generally, you may choose the form or format of disclosure for records requested. The Agency must provide the records in the requested form or format if the Agency can readily reproduce the record in that form or format.

(b) The Agency may charge you the direct costs involved in converting records to the requested format if the Agency does not normally maintain the records in that format (*see* § 2105.42).

§ 2105.8 What if your request seeks records about another person?

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) The Agency can require you to supply additional information if necessary to verify that a particular

person has consented to disclosure or is deceased.

§ 2105.9 May you ask for the processing of your request to be expedited?

You may ask for the processing of your request to be expedited. If you are seeking expedited processing, your request must include a justification that addresses and meets the criteria in § 2105.18 and includes the certification required at § 2105.18(b)(2).

§ 2105.10 What contact information should your request include?

A request should include your name and a way (such as a mailing or email address) for the Agency to send responsive records to you and/or to request additional information or clarification of your request. You may also wish to include a daytime telephone number (or the name and telephone number of an appropriate contact).

Subpart C—Processing Requests

§ 2105.11 What should you know about how the Agency processes requests?

(a) Except as described in § 2105.12, the Agency is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the Agency will include only records in its possession and control on the date that it begins its search.

(c) The Agency will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the Agency will search paper and/or electronic records (for example, emails), as appropriate. The Agency will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the Agency's automated information system.

(d) If the Agency receives a request for records in its possession that it did not create or that another Federal agency is substantially concerned with, it may undertake consultations and/or referrals as described in § 2105.12.

§ 2105.12 How do consultations and referrals work?

(a) Consultations and referrals generally occur outside the Agency.

(1) Paragraphs (b) through (f) of this section address consultations and referrals that occur outside the Agency when the Agency has responsive records.

(2) Paragraph (g) of this section addresses what happens when the Agency has no responsive records but believes responsive records may be in the possession of a Federal agency outside the Agency.

(b) If, while responding to a request, the Agency locates records that originated with another Federal agency, it usually will refer the request and any responsive records to that other agency for a release determination and direct response.

(c) If the Agency refers records to another agency, it will document the referral and maintain a copy of the records that it refers and notify you of the referral in writing. When the Agency notifies you of the referral, it will tell you whether the referral was for part or all of your request and provide the name and contact information for the other agency. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in § 2105.56.

(d) The standard referral procedure is not appropriate where disclosure of the identity of the Agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Agency that received the request will coordinate with the originating agency and seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination will then be conveyed to the requester by the Agency that originally received the request.

(e) If the Agency locates records that originated with another Federal agency while responding to a request, the Agency will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to the Agency (for example, a record may be of primary interest to the Agency if it was developed or prepared according to the Agency's regulations or directives, or in response to an Agency request);

(2) The Agency is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(f) On receipt of any request involving classified information, the Agency will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable Executive order concerning the classification of records, the receiving agency will refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever the Agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Agency will refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(g) If the Agency receives a request for records not in its possession, but that the Agency believes may be in the possession of a Federal agency outside the Agency, the Agency will return the request to you, may advise you to submit it directly to the other agency, will notify you that the Agency cannot comply with the request, and will close the request. If you believe this response was in error, you may file an appeal in accordance with the procedures in § 2105.56.

Subpart D—Timing of Responses to Requests

§ 2105.13 In what order are responses usually made?

The Agency ordinarily will respond to requests according to their order of receipt within their processing track.

§ 2105.14 What is multitrack processing and how does it affect your request?

(a) Processing tracks are used to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the Agency considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are designated as follows:

(1) Simple: Requests in this track will take between one to five workdays to process;

(2) Normal: Requests in this track will take between six to twenty workdays to process;

(3) Complex: Requests in this track will take between twenty-one workdays and sixty workdays to process; or

(4) Voluminous: Requests in this track involve very complex processing challenges, which may include a large number of potentially responsive

records, and will take over sixty workdays to process.

(d) The Agency also has a specific processing track for requests that are granted expedited processing under the standards in § 2105.18. These requests will be processed as soon as practicable.

(e) The Agency must advise you of the track into which your request falls and, when appropriate, will offer you an opportunity to narrow your request so that it can be placed in a different processing track. If you request placement in a particular processing track but the Agency places you in a different processing track, the Agency will provide you with an explanation of why you were not placed in the processing track you requested.

(f) The use of multitrack processing does not alter the statutory deadline for an Agency to determine whether to comply with your FOIA request (*see* § 2105.15).

(g) You may inquire about the status of your request, including its estimated processing completion date, by contacting the FOIA Public Liaison, whose contact information may be found at *https://www.cfa.gov/foia.*

§ 2105.15 What is the basic time limit for responding to a request?

(a) Ordinarily, the Agency has 20 workdays (including the date of receipt) to determine whether to comply with a request, but unusual circumstances may allow the Agency to take longer than 20 workdays (*see* § 2105.17).

(b) A consultation or referral under § 2105.12 does not restart the statutory time limit for responding to a request.

§ 2105.16 When can the Agency suspend the basic time limit?

(a) The basic time limit in § 2105.15 may be temporarily suspended for the time it takes you to respond to one written communication from the Agency reasonably asking for clarifying information.

(b) The basic time limit in § 2105.15 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the Agency that are necessary to clarify issues regarding fee assessment (*see* § 2105.49).

§ 2105.17 When may the Agency extend the basic time limit?

(a) The Agency may extend the basic time limit, if unusual circumstances exist, by notifying you in writing of:

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the Agency will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available its FOIA Public Liaison (*see* § 2105.63) to assist in resolving any disputes between you and the Agency, and notify you of your right to seek dispute resolution from the Office of Government Information Services (OGIS).

(c) If the Agency extends the time limit under this section and you do not receive a response in accordance with § 2105.15(a) in that time period, you may consider the request denied and file an appeal in accordance with the procedures in § 2105.56.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

§ 2105.18 When will expedited processing be provided and how will it affect your request?

(a) The Agency will provide expedited processing upon request if you demonstrate to the satisfaction of the Agency that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) Where there is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media.

(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how your request meets one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing of your request by writing to the appropriate FOIA contact in the Agency that maintains the records requested any time before the Agency issues its final response to your request. When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

(d) The Agency must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(e) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(f) If expedited processing is denied, the Agency will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Agency's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(g) If you appeal the Agency's expedited processing decision, that portion of your appeal (if it is properly formatted under § 2105.56) will be processed before appeals that do not challenge expedited processing decisions.

(h) If the Agency has not responded to the request for expedited processing within 10 calendar days, you may file an appeal (for nonresponse in accordance with § 2105.54(a)(8)).

Subpart E—Responses to Requests

§ 2105.19 How will the Agency respond to requests?

(a) When the Agency informs you of its decision to comply with a request by granting, partially granting, or denying the request, it will do so in writing and in accordance with the deadlines in subpart D of this part. The Agency's written response will include a statement about the services offered by its FOIA Public Liaison. The Agency's

written response will also include a statement about the services offered by the Office of Government Information Services (OGIS).

(b) If the Agency determines that your request will take longer than 10 workdays to process, the Agency immediately will send you a written acknowledgment that includes the request's individualized tracking number and processing track (*see* § 2105.14(e)). The acknowledgement may also include a brief description of the subject of your request.

§ 2105.20 How will the Agency grant requests?

(a) Once the Agency makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of the availability of its FOIA Public Liaison to offer assistance, and of any fees charged under subpart G of this part.

(c) The Agency will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, at its discretion).

(d) If the records (or portions of records) are not included with the Agency's notification, the Agency will advise you how, when, and where the records will be released or made available.

§ 2105.21 When will the Agency deny a request or procedural benefits?

(a) The Agency denies a request when it makes a decision that:

(1) A requested record is exempt, in full or in part;

(2) The request does not reasonably describe the records sought;

(3) A requested record does not exist, cannot be located, or is not in the Agency's possession and/or control; or

(4) A requested record is not readily reproducible in the form or format you seek.

(b) The Agency denies a procedural benefit only, and not access to the underlying records, when it makes a decision that:

(1) A fee waiver, or another fee-related issue, will not be granted; or

(2) Expedited processing will not be provided.

(c) The Agency must consult with legal counsel before it denies a fee waiver request or withholds all or part of a requested record.

§ 2105.22 How will the Agency deny requests?

(a) The Agency must notify you in writing of any denial of your request.

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial, along with an office phone number or email address;

(2) A statement of the reasons for the denial;

(3) A reference to any FOIA exemption applied by the Agency to withhold records in full or in part, along with a statement that the Agency reasonably foresees that disclosure would harm an interest protected by the applied exemption(s) or disclosure is prohibited by law;

(4) An estimate of the volume of any records withheld in full or in part (for example, by providing the number of pages or some other reasonable form of estimation), unless including an estimate would harm an interest protected by an exemption used to withhold the records and the Agency explains this harm to you;

(5) The name and title of legal counsel consulted (if the Agency is denying a fee waiver request or withholding all or part of a requested record);

(6) Advisement of the right to seek dispute resolution services from the Agency's FOIA Public Liaison and the Office of Government Information Services (OIGS); and

(7) A statement that the denial may be appealed under subpart H of this part and a description of the procedures in subpart H of this part.

§ 2105.23 What if the requested records contain both exempt and nonexempt material?

If responsive records contain both exempt and nonexempt material, the Agency will consult with legal counsel, as discussed in § 2105.21(c). After consultation, the Agency will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record the amount of information deleted and the FOIA exemption under which the deletion was made, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) If technically feasible, indicating the amount of information deleted and the FOIA exemption under which the deletion was made at the place in the record where the deletion was made.

Subpart F—Handling Confidential Information

§ 2105.24 May submitters of possibly confidential information designate information as confidential when making submissions?

(a) The Agency encourages, but does not require, submitters to designate confidential information in good faith (in other words, to identify specific information as information the submitter considers protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4)), at the time of submission or reasonably soon thereafter.

(b) The designations discussed in paragraph (a) of this section assist the Agency in identifying what information obtained from the submitter is possibly confidential and triggers the requirement for Agency-provided notifications under § 2105.25(a)(1).

§ 2105.25 When will the Agency notify a submitter of a request for their possibly confidential information?

(a) Except as outlined in § 2105.27, an Agency must promptly notify a submitter in writing when it receives a FOIA request if:

(1) The requested information has been designated by the submitter as confidential information under § 2105.24(a); or

(2) The requested information has not been designated as confidential information by the submitter under § 2105.24(a), but the Agency identifies it as possibly confidential information.

(b) If a voluminous number of submitters are involved, the Agency may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the Agency's website, or the **Federal Register**) instead of providing a written notice to each submitter.

§ 2105.26 What information will the Agency include when it notifies a submitter of a request for their possibly confidential information?

A notice to a submitter must include:

(a) Either a copy of the request, the exact language of the request, or (for notices published under § 2 105.25(b)) a general description of the request;

(b) Either a description of the possibly confidential information located in response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under §§ 2105.28 and 2105.29;

(d) A time limit for responding to the Agency—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2105.25(b))—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the Agency, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under paragraph (d) of this section will create a presumption that the submitter has no objection to the disclosure of the information in question.

§ 2105.27 When will the Agency not notify a submitter of a request for their possibly confidential information?

The notice requirements of § 2105.26 will not apply if:

(a) The information has been lawfully published or officially made available to the public; or

(b) Disclosure of the information is required by a statute other than the FOIA or by a regulation (other than this part) issued in accordance with the requirements of Executive Order 12600.

§ 2105.28 How and when may a submitter object to the disclosure of confidential information?

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the Agency that specifies all grounds for withholding the particular information under any FOIA exemption (*see* § 2105.29 for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under § 2105.26(d) will be considered to have no objection to disclosure of the information. Responses received by the Agency after this time period will not be considered by the Agency unless the appropriate Agency FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

§ 2105.29 What must a submitter include in a detailed Exemption 4 objection statement?

If a submitter has any objections to disclosure, it should provide the Agency a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is confidential.

§ 2105.30 How will the Agency consider the submitter's objections?

(a) The Agency must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The Agency, not the submitter, is responsible for deciding whether the information will be released or withheld.

§ 2105.31 What if the Agency determines it will disclose information over the submitter's objections?

If the Agency decides to disclose information over the objection of a submitter, the Agency must notify the submitter by certified mail or other traceable mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the Agency determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the Agency intends to release; and

(c) Notice that the Agency intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

§ 2105.32 Will a submitter be notified of a FOIA lawsuit?

If you file a lawsuit seeking to compel the disclosure of confidential information, the Agency must promptly notify the submitter.

§ 2105.33 Will you receive notification of activities involving the submitter?

If any of the following occur, the Agency will notify you:

(a) The Agency provides the submitter with notice and an opportunity to object to disclosure;

(b) The Agency notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

§ 2105.34 Can an Agency release information protected by Exemption 4?

If an Agency determines that the requested information is protected from release by Exemption 4 of the FOIA, the Agency has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

Subpart G—Fees

§ 2105.35 What general principles govern fees?

(a) The Agency will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

(b) The Agency may contact you for additional information to resolve fee issues.

(c) The Agency ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the ''Department of Treasury.''

(e) The Agency should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the Agency.

(f) If the Agency does not comply with any of the FOIA's statutory time limits:

(1) Except as provided in paragraph (f)(2) of this section, the Agency cannot assess any search fees (or, if you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution, duplication fees).

(2)(i) If the Agency has determined that unusual circumstances apply (as the term is defined in § 2105.67) and the Agency provided you a timely written notice to extend the basic time limit in accordance with § 2105.17, the noncompliance is excused for an additional 10 workdays.

(ii) If the Agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, the noncompliance is excused if the Agency has provided you a timely written notice in accordance with § 2105.17 and has discussed with you via written mail, email, or telephone (or made not less than 3 good-faith attempts to do so) how you could effectively limit the scope of the request.

(iii) If a court has determined that exceptional circumstances exist (as that term is defined in § 2105.67), the noncompliance is excused for the length of time provided by the court order.

(g) If the fee for processing your request is less than $50, you will not be charged unless multiple requests are

aggregated under § 2105.52 to an amount that is $50 or more.

(h) If you fail to pay any FOIA-related fee within 30 calendar days of the date of billing, the processing of any new or ongoing requests and/or appeals from you shall ordinarily be suspended.

(i) If you would like to reformulate your request so it will meet your needs at a lower cost, you may wish to seek assistance from the Agency's designated FOIA contact or its FOIA Public Liaison (*see* § 2105.63).

§ 2105.36 What are the requester fee categories?

(a) There are three categories of requesters for the purposes of determining fees:

(1) Commercial-use;

(2) Educational and noncommercial scientific institutions and representatives of news media; and

(3) All others.

(b) If you do not submit sufficient information in your FOIA request for the Agency to determine your proper fee category, the Agency may ask you to provide additional information (*see* § 2105.49). If you request placement in a particular fee category but the Agency places you in a different fee category, the Agency will provide you with an explanation of why you were not placed in the fee category you requested (for example, if you were placed in the commercial use requester category rather than the category you requested, the Agency will describe how the records would further your commercial, trade, or profit interests).

(c) See § 2105.67 for the definitions of each of these fee categories.

§ 2105.37 How does your requester category affect the fees you are charged?

You will be charged as shown in the following table:

TABLE 1 TO § 2105.37

Requester category	Search fees	Review fees	Duplication fees
Commercial use requester	Yes	Yes	Yes.
Educational and noncommercial scientific institutions and representative of news media requester.	No	No	Yes (first 100 pages, or equivalent volume, free).
All other requesters	Yes (first two hours free)	No	Yes (first 100 pages, or equivalent volume, free).

§ 2105.38 How will fee amounts be determined?

(a) The Agency will charge the types of fees discussed in this subpart unless a waiver of fees is required under § 2105.37 or has been granted under § 2105.43.

(b) Because the types of fees discussed in this subpart already account for the overhead costs associated with a given fee type, the Agency should not add any additional costs to those charges.

§ 2105.39 What search fees will you have to pay?

(a) The Agency will charge search fees for all requests, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a). The Agency may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (GS) base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories, as applicable:

(1) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12 are classified as professional for this purpose); and

(3) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed in paragraph (b) of this section at *https://www.cfa.gov/foia.*

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, the Agency will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

§ 2105.40 What duplication fees will you have to pay?

(a) The Agency will charge duplication fees, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a).

(b) If photocopies or scans are supplied, the Agency will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the Agency will charge the actual costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2105.39(b).

(d) If the Agency must scan paper records to accommodate your preference to receive records in an electronic format or print electronic records to accommodate your preference to receive records in a paper format, you will pay both the per page amount noted in appendix A to this part and the time spent by personnel scanning or printing the requested records. For each quarter hour spent by personnel scanning or printing the requested records, the fees will be the same as those charged for a search under § 2105.39(b).

§ 2105.41 What review fees will you have to pay?

(a) The Agency will charge review fees if you make a commercial-use request, subject to the restrictions of §§ 2105.35(f), 2105.37, and 2105.38(a).

(b) The Agency will assess review fees in connection with the initial review of the record (the review conducted by the Agency to determine whether an exemption applies to a particular record or portion of a record).

(c) The Agency will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the Agency's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The Agency will charge review fees at the same rates as those charged for a search under § 2105.39(b).

(e) The Agency can charge review fees even if the record(s) reviewed ultimately is not disclosed.

§ 2105.42 What fees for other services will you have to pay?

(a) Although not required to provide special services, if the Agency chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

(b) Examples of these services include providing multiple copies of the same record, converting records that are not already maintained in a requested format to the requested format, obtaining research data under § 2105.66, sending records by means other than first class mail, and conducting a search that requires the creation of a new computer search program to locate the requested records.

(c) The Agency will notify you of these fees before they accrue and will obtain your written assurance of payment or an advance payment before proceeding (*see* §§ 2105.47 and 2105.48).

§ 2105.43 When will the Agency waive fees?

(a) The Agency will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the Agency determines, based on all available information, that you have demonstrated (by addressing and meeting each of the criteria listed in § 2105.46) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of Government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the Government.

(c) When deciding whether to waive or reduce fees, the Agency will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the Agency will deny the fee waiver request. The Agency may, at its discretion, request additional information from you (*see* § 2105.49).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis under the criteria discussed in paragraph (a) of this section and § 2105.46. If you have received a fee waiver in the past, that does not mean you are automatically entitled to a fee waiver for every request submitted.

(e) The Agency must not make value judgments about whether the information at issue is ''important'' enough to be made public; it is not the Agency's role to attempt to determine the level of public interest in requested information.

§ 2105.44 When may you ask the Agency for a fee waiver?

(a) You should request a fee waiver when your request is first submitted to the Agency (*see* § 2105.5).

(b) You may submit a fee waiver request at a later time if the Agency has not yet completed processing your request.

§ 2105.45 How will the Agency notify you if it denies your fee waiver request?

If the Agency denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Agency's fee waiver criteria in § 2105.46;

(b) The name and title or position of each person responsible for the denial;

(c) The name and title of legal counsel consulted;

(d) Advisement of the right to seek dispute resolution services from the Agency's FOIA Public Liaison and the Office of Government Information Services (OIGS);

(e) Your right to appeal the denial under subpart H of this part and a description of the requirements set forth therein, within 30 workdays from the date of the fee waiver denial letter; and

(f) Your anticipated fees, in accordance with § 2105.47.

§ 2105.46 How will the Agency evaluate your fee waiver request?

(a) In deciding whether your fee waiver request meets the requirements of § 2105.43(a)(1), the Agency will consider the criteria listed in paragraphs (a)(1) through (4) of this section.

(1) How the records concern the operations or activities of the Federal Government.

(2) How disclosure is likely to contribute to public understanding of those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

(ii) The logical connection between the content of the records and the operations or activities;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding; and

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information). If we have categorized you as a representative of the news media under § 2105.36, we will presume you have this ability and intent.

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

(ii) Whether the information would confirm or clarify data that has been released previously;

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Agency that existed prior to disclosure; and

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the internet, or as part of the administrative record for a particular issue, it is less likely that there will be a significant contribution from release.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver meets the requirements in § 2105.43(a)(2), the Agency will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The Agency will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(3) If you do have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you or your organization may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

§ 2105.47 When will you be notified of anticipated fees?

(a) The Agency will notify you under this section unless:

(1) The anticipated fee is less than $50 (*see* § 2105.35(g));

(2) You have been granted a full fee waiver; or

(3) You have previously agreed to pay all the fees associated with the request.

(b) If none of the exceptions in paragraph (a) of this section apply, the Agency will:

(1) Promptly notify you of the estimated costs for search, review, and/or duplication;

(2) Ask you to provide written assurance within 20 workdays that you will pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the Agency does not receive your written response containing the additional information that resolves any fee issues, in accordance with paragraphs (b)(2) and/or (4) of this section, within 20 workdays after the Agency has requested it, the Agency will presume that you are no longer interested in the records and will close the file on the request.

(d) After the Agency begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the Agency will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the Agency's FOIA Officer or Public Liaison can assist you.

§ 2105.48 When will the Agency require advance payment?

(a) The Agency may require advance payment before starting further work when it finds the estimated fee is over $250.

(1) When the Agency determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that you make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Agency may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If you have previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, the Agency may require that you pay the full amount due, plus any applicable interest on that prior request. The Agency may require that you make an advance payment of the full amount of any anticipated fee before it begins to process a new request or continues to process a pending request or any pending appeal.

(b) If the Agency believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the Agency will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (*see* § 2105.51), and pay in advance the estimated fee for the new request.

(c) When the Agency notifies you that an advance payment is due under paragraph (a) of this section, it will give you an opportunity to reduce the fee by modifying the request.

(d) Your payment of the funds you owe the Agency for work it has already completed before records are sent to you is not an advance payment under paragraph (a) of this section.

(e) If the Agency requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the Agency's fee letter, the Agency will presume that you are no longer interested and will close the file on the request.

§ 2105.49 What if the Agency needs clarification about fee issues?

If your FOIA request does not contain sufficient information for the Agency to determine your proper fee category or leaves another fee issue unclear, the Agency may ask you to provide additional clarification. If it does so, the Agency will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.

§ 2105.50 How will you be billed?

If you are required to pay a fee associated with a FOIA request, the Agency will send a bill for collection.

§ 2105.51 How will the Agency collect fees owed?

(a) The Agency may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The Agency will assess interest charges at the rate provided in 31 U.S.C. 3717 and interest will accrue from the billing date until the Agency receives payment.

(c) The Agency will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

§ 2105.52 When will the Agency combine or aggregate requests?

(a) The Agency may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(1) The Agency may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(2) The Agency may aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(b) The Agency will not aggregate multiple requests involving unrelated matters.

§ 2105.53 What if other statutes require the Agency to charge fees?

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the Agency to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-based fee schedule, the Agency will inform you whom to contact to obtain the records.

Subpart H—Administrative Appeals

§ 2105.54 When may you file an appeal?

(a) You may file an appeal when:

(1) The Agency withholds records, or parts of records;

(2) The Agency informs you that your request has not adequately described the records sought;

(3) The Agency informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The Agency did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated or you have been placed in the wrong fee category);

(6) The Agency denied your request for a fee waiver;

(7) The Agency did not make a decision within the time limits in § 2105.15 or, if applicable, § 2105.16; or

(8) The Agency denied, or was late in responding to, a request for expedited processing filed under the procedures in § 2105.18.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (*see* § 2105.60).

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the Agency's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2105.55 or they will not be processed.

§ 2105.55 How long do you have to file an appeal?

(a) Appeals covered by § 2105.54(a)(1) through (5) must be received by the FOIA Appeals Officer no later than 90 days from the date of the final response.

(b) Appeals covered by § 2105.54(a)(6) must be received by the FOIA Appeals Officer no later than 90 days from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2105.54(a)(7) may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2105.54(a)(8) should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

§ 2105.56 How do you file an appeal?

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at *https://www.cfa.gov/foia/*). Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the Agency concerning the FOIA request, including the request and the Agency's response (if there is one); and

(2) An explanation of why you believe the Agency's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Agency needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2105.18 or §§ 2105.43 and 2105.46 are met.

(e) All communications concerning an appeal should be clearly marked with the words: ''FREEDOM OF INFORMATION APPEAL.''

(f) The Agency will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not begin to run until the correspondence is received.

§ 2105.57 Who makes decisions on appeals?

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including legal counsel, for denials of records and fee waivers.

(c) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

§ 2105.58 How are decisions on appeals issued?

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the Agency's determination in whole or in part must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide you with notification of the statutory right to file a lawsuit and will inform you of the dispute resolution services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If the Agency's decision is remanded or modified on appeal, the Agency will notify you of that determination in writing. The Agency will then further process the request in accordance with that appeal determination and will respond directly to you.

(c) Dispute resolution is a voluntary process. If the Agency agrees to participate in the dispute resolution services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

§ 2105.59 When can you expect a decision on your appeal?

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2105.56.

(b) If the Agency is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory right to seek review in a United States District Court.

§ 2105.60 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Agency's satisfaction that the appeal meets one of the criteria under § 2105.18 and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The appropriate deciding official for FOIA appeals will advise you whether the Agency will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the appropriate deciding official for FOIA appeals decides to grant expedited processing, he or she will give the appeal priority over other pending appeals and process it as soon as practicable.

§ 2105.61 Must you submit an appeal before seeking judicial review?

Before seeking review by a court of the Agency's adverse determination, you generally must first submit a timely administrative appeal.

Subpart I—General Information

§ 2105.62 Where are records made available?

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Agency's website. They may also be available at the Agency's office location.

§ 2105.63 What are public liaisons?

(a) The Agency has a FOIA Officer or Public Liaison who can assist requesters who have concerns about the service they received when seeking records or who are seeking assistance under § 2105.3 or § 2105.35(i).

(b) FOIA Public Liaisons report to the Agency's Chief FOIA Officer and you can raise concerns to them about the service you have received.

(c) FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

(d) A list of the Agency's FOIA Public Liaisons is available at *https://www.cfa.gov/foia.*

§ 2105.64 When will the Agency make records available without a FOIA request?

(a) Each Agency must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Agency's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

§ 2105.65 How will FOIA materials be preserved?

(a) Each Agency must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 4.2 of the National Archives and Records Administration (NARA) or another NARA-approved records schedule.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 4.2 of NARA or another NARA-approved records schedule.

§ 2105.66 How will an Agency handle a request for federally-funded research data?

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced under an award, in accordance with OMB Circular A–110:

(1) If the Agency was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The Agency will review the research data to see if it can be released under the FOIA.

(b) If the Agency obtains the research data solely in response to your FOIA request, the Agency may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the Agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the Agency may assess under the FOIA.

(c) The Agency will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The Agency will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the Agency, not the recipient, is responsible for deciding whether the research data will be released or withheld.

§ 2105.67 What definitions apply to this part?

For the purposes of this part, the following definitions apply:

Agency means the Commission of Fine Arts.

Commercial interest means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in determining whether you have a commercial interest.

Commercial use means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

Confidential information means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Agency from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

Direct costs means those resources that the Agency expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

Duplication means reproducing a copy of a record or of the information contained in it necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

Educational institution means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

Exceptional circumstances means a delay that does not result from a predictable workload of requests (unless the Agency demonstrates reasonable progress in reducing its backlog of pending requests).

Exempt means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Exemption means one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)–(9).

Expedited processing means giving a FOIA request priority and processing it ahead of other requests pending in the Agency because you have shown a compelling need for the records.

Fee category means one of the three categories, discussed in §§ 2105.36 and 2105.37, that agencies place you in for the purpose of determining whether you will be charged fees for search, review, and duplication.

FOIA means the Freedom of Information Act, 5 U.S.C. 552, as amended.

FOIA libraries means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the Agency, at its discretion, makes available to the public for inspection and copying.

Frequently requested records means records that have been released to any person in response to a FOIA request and that have been requested, or that the Agency anticipates will be requested, at least two more times under the FOIA.

Multitrack processing means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are ordinarily processed on a first-in/first-out basis.

Noncommercial scientific institution means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

OMB Fee Guidelines means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget on March 27, 1987.

Published means, for the purposes of § 2105.66 only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

Recipient means, for the purposes of § 2105.66 only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include Government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are Government-owned or controlled, or are designated as federally-funded research and development centers.

Record means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news as used in this definition means information that is about current events or that would be of current interest to the public. Examples of news media entities are newspapers, television, websites, or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of news) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

Research data means, for the purposes of § 2105.66 only, the recorded factual material commonly accepted in the historic and/or architectural communities as necessary to validate research findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term recorded as used in this definition excludes physical objects (*e.g.,* laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

Review means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

Search means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

Submitter means any person or entity outside the Federal Government from whom the Agency obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

Unusual circumstances means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Agency, having a substantial interest in the determination of the request.

Workday means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

You means a person requesting records, or filing an appeal, under the FOIA.

Appendix A to Part 2105—Fee Schedule

Types of records	Fee
(1) Physical records:	
Pages no larger than 8.5 x 14 inches, when reproduced by standard office copying machines or scanned into an electronic format.	$.15 per page ($.30 for double-sided copying).
Color copies of pages no larger than 8.5 x 11 inches	$.90 per page.
Pages larger than 8.5 x 14 inches	Direct cost to CFA.
Color copies of pages no larger than 11 x 17 inches	$1.50 per page.
Photographs and records requiring special handling (for example, because of age, size, or format)	Direct cost to CFA.
(2) Electronic records:	
Charges for services related to processing requests for electronic records	Direct cost to CFA.
(3) Certification:	
Each certificate of verification attached to authenticate copies of records	$.25.
(4) Postage:	
Charges that exceed the cost of first class postage, such as express mail or overnight delivery	Postage or delivery charge.
(5) Other Services:	
Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them.	Direct cost to CFA.

Dated: May 31, 2019.

Thomas Luebke,

Secretary.

[FR Doc. 2019–11775 Filed 6–13–19; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[MB Docket No. 18–119, FCC 19–40]

FM Translator Interference

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Federal Communications Commission adopts rules to strengthen and streamline the rules relating to FM translator interference with other broadcast stations by allowing FM translators to resolve interference issues by changing channels to any available same-band frequency using a minor modification application; standardizing the information that must be compiled and submitted by any station claiming interference, including establishing a required minimum number of listener complaints; establishing interference complaint resolution procedures; and establishing an outer contour limit for the affected station within which interference complaints will be considered actionable.

DATES: Effective July 15, 2019, except for the amendments to §§ 74.1203(a)(3) and 74.1204(f), which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and which will become effective after the Commission publishes a document in the **Federal Register** announcing such approval and the relevant effective date. The Federal Communications Commission will publish a separate document in the **Federal Register** announcing the effective date of these amendments.

FOR FURTHER INFORMATION CONTACT: Christine Goepp, Attorney Advisor, Media Bureau, Audio Division, (202) 418–7834; James Bradshaw, Senior Deputy Chief, Media Bureau, Audio Division, (202) 418–2739; Lisa Scanlan, Deputy Division Chief, Media Bureau, Audio Division, (202) 418–2704. Direct press inquiries to Janice Wise at (202) 418–8165. For additional information concerning the PRA information collection requirements contained in this document, contact Cathy Williams, Federal Communications Commission, at (202) 418–2918, or via email *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (*R&O*), MB Docket No. 18–119; FCC 19–40, adopted on May 9, 2019 and released May 9, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) website at *http://www.fcc.gov/ecfs.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Paperwork Reduction Act of 1995

This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, *see* 44 U.S.C. 3507. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document in a separate **Federal Register** Notice, as required by the PRA. These new or modified information collection will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will send a copy of this *R&O* to Congress and the Government Accountability Office

(GAO) pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In this *R&O,* the Commission adopts rules regarding FM translator interference that it proposed in the Notice of Proposed Rulemaking, FCC 18–60, 33 FCC Rcd 4729 (2018) (*NPRM*). Specifically, it adopts the following proposals: (1) Allowing FM translators to resolve interference issues by changing channels to any available same-band frequency using a minor modification application; (2) standardizing the information that must be compiled and submitted by any station claiming interference from an FM translator, including a required minimum number of listener complaints; (3) establishing interference complaint resolution procedures; and (4) establishing an outer contour limit for the affected station within which interference complaints will be considered actionable while providing for a process to waive that limit in special circumstances. These measures are designed to limit or avoid protracted and contentious interference disputes, provide translator licensees additional investment certainty and flexibility to remediate interference, and provide affected stations earlier and expedited resolution of interference complaints.

2. Recent substantial growth in the translator service, as well as the economic importance of translators for AM station viability, has led to increased industry interest in clarifying and streamlining the translator interference rules to create greater investment certainty for translator operators and avoid protracted and expensive interference resolution disputes. Currently, a translator station may be forced to cease operations due to just one unresolved listener complaint. Stations seeking to mitigate interference by changing channels as a minor change are limited to first-, second-, or third-adjacent (collectively, Adjacent) or intermediate frequency (IF) channels. The interference resolution process is often sidetracked by disputes over the validity of the claimed interference and the objectivity of complaining listeners, or by other intentional or unintentional delays. Finally, as noted in the *NPRM,* the current interference resolution process may promote negative interactions between translator operators and listener complainants. In the *R&O,* the Commission addresses these issues while taking into account the saturation of the FM spectrum in many markets, the various interests of the services involved, and the technical integrity of the FM band.

Channel Changes

3. The Commission adopts the *NPRM's* proposal to allow FM translator stations to remediate interference either caused to or received from another broadcast station by changing channels to any available same-band frequency as a minor change. Commenters generally support this proposal and confirm that the option to change to non-Adjacent channels would benefit translators by providing a relatively low-cost way to resolve interference with little or no reduction in service area. However, the Commission declines to undermine the filing window and auction processes by allowing translator operators the additional flexibility of cross-band channel changes for interference mitigation purposes. Therefore, it modifies § 74.1233(a)(1) to define as a major change any channel change for a translator seeking to resolve interference from a non-reserved band frequency to a reserved band frequency, or vice versa, as proposed in the *NPRM.* The Commission finds that a simple engineering statement of mitigation of interference at the requested frequency is sufficient as a threshold standard to permit the translator applicant to request a channel change as a minor modification. This showing is in keeping with the standard for LPFM stations and with the Commission's goal of encouraging translators to change channels as a means of avoiding interference. Moreover, the Commission does not recognize a qualitative difference between FM channels and notes that translator channel change applicants must not only show that interference exists at the current frequency but also that the proposed change will not cause interference at the new frequency. Applicants for a translator channel change will not be required to show that the change will not preclude LPFM opportunities or to notify potentially affected parties in addition to the notice provided by the existing public notice system.

Required Contents of Translator Interference Claims

4. In the *R&O,* the Commission establishes a minimum number of listener complaints ranging from 6 to 25 depending on the population served by the complaining station. The Commission explains that a proportionate approach, which was supported by several commenters, would be fairer and more effective than a single minimum number for all populations. Specifically, it bases the complaint minimums on an approximate increase of one complaint for every 100,000 people in the station's service area up to a cap of 25. For administrative feasibility and ease of calculation, the Commission adopts the following table specifying each complaint minimum by population tier:

Population within protected service contour	Minimum listener complaints required for interference claim
1–199,999	6
200,000–299,999	7
300,000–399,999	8
400,000–499,999	9
500,000–999,999	10
1,000,000–1,499,999	15
1,500,000–1,999,999	20
2,000,000–2,499,999 or more	25
LPFM stations with fewer than 5,000	3

To accommodate concerns raised by LPFM advocates, the Commission adopts three complaints as the minimum complaint number for LPFM stations with less than 5,000 people within their protected service contour. For all other broadcast services, as well as for LPFM stations with 5,000 or more people within their service areas, the minimum number at the lowest population tier is six complaints.

5. In the *NPRM,* the Commission tentatively concluded that it would not adopt NAB's proposal that the Commission require a showing of interference at a sufficient number of locations within the affected area to demonstrate ''a real and consistent interference problem,'' but did propose that translator interference claims by affected stations must be based on ''separate receivers at separate locations.'' In the *R&O,* the Commission clarifies that ''separate receivers at separate locations'' means that multiple listener complaints from a single building (*e.g.,* complaints from multiple dwellers of an apartment building or house) or workplace will not count beyond the first complaint toward the six-complaint minimum. The existence of a ''real and consistent interference problem'' will also be confirmed by the threshold requirement that valid listener complaints be located within an undesired-to-desired (U/D) zone of potential interference.

6. Regarding the contents of each individual listener complaint, the Commission defines a listener complaint as a complaint that is signed and dated by the listener and contains the following information: (1) The complainant's full name, address, and phone number; (2) a clear, concise, and accurate description of the location

where the interference is alleged to occur; (3) a statement that the complainant listens to the desired station using an over-the-air signal at least twice a month to demonstrate the complainant is a regular listener; and (4) a statement that the complainant has no legal, employment, financial, or familial affiliation or relationship with the desired station, to demonstrate the complainant is disinterested. Electronic signatures are acceptable for this purpose. The Commission concludes that codifying additional details regarding what constitutes a ''regular listener''—for example, setting a minimum time for each listening session—is not necessary in light of the fact that each listener is sufficiently committed to the complaining station to complete and sign a statement with the enhanced requirements set out in the *R&O.*

7. Regarding the requirement that a complainant have no legal, financial, employment, or familial affiliation or relationship with the desired station, the Commission states that it will reject attempts to use the following evidence to claim a listener is connected with the station: (1) Social media connections, such as listeners friending or following a station or its personnel on Facebook, Twitter, or other social media platforms; (2) membership in listener clubs or participation in station-run promotions, contests, and events; (3) charitable donations to the station, such as listener contributions to a noncommercial education (NCE) station; and (4) time contributed volunteering at a station or at a station-run event, so long as the volunteer does not hold a regular position at the station comparable to a station employee. The Commission concludes that these activities do not amount to a legal, financial, employment, or familial stake or interest in the station, but rather constitute an extension of the listener relationship. However, it clarifies that advertisers are deemed to have a financial interest in the station, as are underwriters for NCE stations.

8. The Commission agrees with commenters who argue that complaints should be accepted regardless of how they arise, including those solicited by over-the-air announcements (although such announcements must not include inaccurate or misleading information). The Commission states that it will also accept listener complaints presented in a standardized format, such as a form letter or list that the complaining station supplies to its listeners, as long as all the required elements are present.

9. A complaint that meets all the above requirements will be presumed to be valid. The Commission finds that such a presumption will reduce disputes over listener bona fides and will streamline staff processing of translator interference cases. It rejects the suggestion that the Commission take a more active role in verifying complaints, including ''vetting and questioning'' listener complainants, holding hearings to establish the veracity of complaints before a translator is ordered off the air, or making complaints subject to criminal penalties under 18 U.S.C. 1001. However, the Commission agrees that translator operators should be able to verify the basic information contained in each complaint, such as the existence of the complainant and residence at the address provided. Therefore, after review of the contents of a translator interference claim package, the staff will direct the complaining station to serve the translator operator with a non-redacted copy of the relevant listener complaints. The burden of rebutting the presumption of validity of each complaint, once established, will be on the translator operator.

10. In addition to the required minimum number of valid listener statements, a station submitting a translator interference claim package pursuant to either § 74.1203(a)(3) or § 74.1204(f) must include: (1) A map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (2) a statement that the complaining station is operating within its licensed parameters; (3) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (4) U/D data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds −20 dB for co-channel situations, −6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology.

11. Requirement (1) was proposed in the *NPRM.* It already applies to section 74.1204(f) predicted interference claims and is extended to § 74.1203(a)(3) actual interference claims. Requirement (2) is necessary due to the 45 dBu contour adopted in the *R&O.* The Commission must be notified if a complaining station is operating outside its licensed parameters—including pursuant to special temporary authority (STA) because such operation could affect its actual versus its licensed 45 dBu signal contour and therefore alter the permissible scope of its interference claim. Requirement (3) provides an opportunity for translators and complaining stations to resolve interference issues privately prior to filing a formal interference claim with the Commission. Finally, requirement (4) is already well-established for § 74.1204(f) claims and is extended to § 74.1203(a)(3) in response to many commenters who question the reliability of listeners' assessment of the source of the perceived interference. Although other methods may be used at the remediation stage to determine the source of interference, for the purpose of determining the initial validity of a listener complaint, the Commission finds that a contour-based U/D ratio is an adequate threshold causation test to establish that the complaining listener is within a ''zone of potential interference'' by the subject translator station to the desired station. In addition to the U/D zone of potential interference test, the 45 dBu contour-based limitation on actionable interference complaints will eliminate many interference complaints that may be actually due to weak, distant signals from the desired station or related issues such as multipath fading, atmospheric ducting, poor reception, or other conditions.

Time Limits

12. The Commission declines to impose a time limit on translator interference complaints of one year after the construction of a new or modified translator facility, as suggested by some commenters. Such a limitation, the Commission finds, would be too great an impingement on the general right of full-service stations to protection from interference by translator stations. However, it imposes a time limit within which the minimum number of listener complaints must be dated.

Ex Parte and Related Issues

13. In the *R&O,* the Commission adopts the proposal in the *NPRM* that a listener whose complaint is sent to a station and then submitted to the Commission as part of an interference claim package filed by the affected station licensee is not a party under the *ex parte* rules because the listener has not submitted a filing with the Commission. Likewise, when the Commission forwards a complaint originally filed directly with the Commission by an individual listener to the affected station, the listener does not become a party to any proceeding related to that listener complaint for *ex parte* purposes if the individual did not serve the relevant translator. However, a

station licensee that files an interference claim package and, after being directed to do so by Commission staff, serves it on the translator, is considered a party to the resulting proceeding, as is the translator. All parties to a restricted complaint proceeding must be served with written presentations to the Commission and be given advance notice of and an opportunity to be present for oral presentations. Similarly, the Commission requires translator operators to serve the complaining station with any filing or submission, including amendments to applications and STA requests, that relate to the station that is the subject of the interference claim.

Remediation Procedures

14. In the *R&O,* the Commission clarifies the appropriate remediation procedures translator operators and complaining stations should follow upon receipt of notice from the Commission that a valid and complete interference claim package has been received. In sum, a translator station may respond to a valid interference claim by changing channels, working with a willing listener to resolve reception issues, or working with the complaining station to resolve station signal interference. Whatever approach(es) it chooses, the translator operator must submit data demonstrating that the interference has been resolved by the relevant deadline or be subject to suspension of operations or reduction of power pursuant to § 74.1203(b).

15. The Commission eliminates the requirement that the listener complainants must cooperate with the translator operator to resolve interference and thus will not discount complaints if the listener refuses to respond to inquiries from the translator operator. Rather, listener cooperation will be voluntary at the discretion of the listener. This approach is intended to avoid negative interactions between listener and translator operator while preserving translator operators' ability to work collaboratively with willing listeners in appropriate circumstances. If the listener's receiving equipment is determined to be the primary cause of the problem and the listener is willing to cooperate with efforts to remediate the interference, the translator operator may attempt to resolve the interference by adjusting or replacing the listener's equipment.

16. While the Commission has long permitted translator operators to resolve interference complaints by replacing or adjusting listener equipment, such an approach must not be taken to extremes. For example, the Bureau has held that providing listeners with smartphones to allow internet streaming of the desired station is not a ''suitable technique'' for resolving interference under § 74.1203(b). Similarly, the Bureau has found that offering a cash payment to a complaining listener does not fulfill the translator operator's remedial obligation under § 74.1203(b). The Commission affirms the reasoning in both of these holdings and reiterates that § 74.1203(b) requires a translator station to remediate the complained-of interference, not merely convince a listener to withdraw a complaint by a cash payment or some other means. Moreover, the Commission notes that each complaining listener may represent only a fraction of the listeners who experience interference. Unlike remediation techniques such as reducing power or changing channels, listener-based remediation does not address interference that may be experienced locally by other listeners. Therefore, if a translator operator wishes to establish that interference has been eliminated through receiver adjustment or replacement, it must document and certify that the desired station can now be heard on the listener's receiver, *i.e.,* that the adjustment or new equipment actually resolved the interference.

17. If the complainant's receiver is *not* the primary cause of the perceived interference, or if the listener chooses not to be involved in the resolution process, then the translator operator and the complaining station must work together to resolve the interference complaint using suitable techniques. In most circumstances, a lack of interference can be demonstrated by on-off tests and/or field strength measurements at the relevant site, provided that they take place in a manner acceptable to both parties. On-off tests also can be used to establish alternate power levels or other technical parameters for the translator station that will eliminate interference. Rather than impose specific technical processes or parameters for such testing, the Commission requires that on-off tests and/or field strength measurements be conducted in a manner acceptable to both parties. Once agreement is reached, the parties must jointly submit the agreed-upon remediation showing to the Commission. If the parties fail to agree upon appropriate methods and technical parameters to be used for interference testing at a particular site or sites, the parties should engage a mutually acceptable third party engineer to observe or carry out the testing. Although the Commission anticipates that the parties will generally share the cost of engaging a neutral third party, it does not mandate the terms of that agreement. Commission staff will make the final determination whether the interference has been resolved based on the information requested and received from the third party engineer. At any point in the process the parties may agree that interference has been resolved using any mutually acceptable means; however, any contested data may not be unilaterally presented to the Commission as a remediation showing (or to dispute a remediation showing).

18. The Commission establishes a target deadline of 90 days to resolve interference claims and directs the Bureau to establish, upon completion of its review of each interference claim package, an individual timeline within which the translator must resolve all properly substantiated interference complaints and submit an acceptable resolution showing or be subject to suspension of operation. The Bureau will also establish any intermediate deadlines, such as a remediation plan deadline, if appropriate.

Contour Limit for Listener Complaints

19. The Commission sets a full power FM, LPFM, FM translator, or FM booster station's 45 dBu signal strength contour as the limit to which it may claim interference to its listeners from an FM translator. Such a limit would provide translator licensees with additional clarity and certainty regarding their investments and protect radio listeners from a loss of service due to a small number of interference complaints on the outer fringes of the complaining station's listenable coverage area. Although the *NPRM* proposed a contour limit of 54 dBu, many commenters provide extensive evidence from markets nationwide to support their contention that full-service stations have substantial listenership outside the 54 dBu signal strength contour—listenership that would be at risk if interference complaints outside this limit were not considered actionable. After reviewing the listenership data provided in the record, the Commission concluded that at and beyond the 45 dBu contour, most stations' signal is not strong enough to reliably attract a significant listening audience. This limit represents a point of diminishing returns when balancing conserving full-service listenership and providing certainty for translator stations and is consistent with the mid-40 dBu range median of the various contour limits suggested by commenters. While declining to allow terrain-based propagation modeling as an alternative

method of determining the extent of a station's 45 dBu contour, the Commission concludes that its adoption of a more generous outer contour limit than the one proposed in the *NPRM,* coupled with a waiver policy for those limited cases where stations provide significant service to communities outside their 45 dBu contour, will adequately protect stations from significant audience loss due to translator interference at the outer edges of their coverage areas.

20. The Commission applies the 45 dBu outer contour limit to both actual interference claims under § 74.1203(a)(3) and predicted interference claims under § 74.1204(f). It also amends § 74.1204(f) to allow a complaining station to submit valid listener complaints from anywhere within its predicted 45 dBu contour rather than, as under the current rules, only from within the relevant translator's predicted 1 mV/v (60 dBu) contour. By modifying the scope of predicted interference claims under § 74.1204(f) to more closely reflect post-construction permit grant actual interference requirements, the Commission anticipates that more potential conflicts can be resolved before applicants are fully invested in the proposed facility and while the translator operator has more options available for resolving the issue.

21. Regarding Adjacent channel protection, the Commission acknowledges that co-channel interference is the most likely to occur and that Adjacent channel interference is less likely. However, it concludes that there is no reason to prohibit complaints of actual Adjacent channel interference or objections to applications based on predicted Adjacent channel interference if an appropriate showing is made the satisfies the requirements set out in the *R&O.* Likewise, the Commission affirms the tentative conclusion in the *NPRM* that the greater contour protections afforded to Class B and Class B1 in the non-reserved band are based on allocations concerns regarding populous service areas that do not affect our analysis regarding actionable translator interference complaints. The listenership information submitted in the record, upon which it bases the 45 dBu contour limit, compiles data from markets located in all Zones. Moreover, the 45 dBu contour limit is well beyond the protected service contour of any station, including Class B and B1 stations. For these reasons, the Commission concludes that it will not further complicate the complaint process by adopting different contour limits for different Zones or station classes.

22. The Commission will consider requests for waiver of the 45 dBu contour limit where the requestor demonstrates the existence of a sizable community of listeners outside the 45 dBu contour limit, recognizing that in certain circumstances a radio station may serve a community outside its 45 dBu contour with programming that by its nature attracts ''determined listeners''—listeners who may tolerate poor reception (or purchase a higher quality antenna) to receive the desired station. Although often formats are duplicated in different markets, there is nonetheless evidence on the record that, in some markets, listeners may rely on programming that is not available locally. In keeping with commenters' suggestions, licensees requesting waiver based on listenership outside the 45 dBu contour must submit at least 20 complaints from listeners outside the 45 dBu contour of the desired station in lieu of—or, optionally, in addition to—the required number of complaints within the 45 dBu contour. Other relevant factors include: (1) Whether geographic features or power/directionality enhance reception at the relevant listener locations (supported if possible by field strength testing); and (2) how established the listener expectation of service is—*i.e.,* how long the desired station has served the relevant communit(ies). As with all waivers, each request will be considered on a case-by-case basis and must demonstrate special circumstances.

23. The Commission emphasizes that nothing in the *R&O* alters the secondary status of translator stations or the long-standing norms that secondary service stations are not entitled to protection from full-service stations and that full-service stations are entitled to protection from predicted and actual interference by secondary services. As always, no translator will have a protected, guaranteed coverage area. Rather, if a primary station chooses to relocate, or modifies its facilities in a way that causes interference to or receives interference from an existing translator station, the translator operator must either accept the interference or, if necessary, modify its facilities or go off air to avoid causing or receiving interference. The new rules will help to better define what constitutes an actionable interference claim and the process for resolving claims, protecting translators from specious interference claims while preserving their fundamental characteristic as a secondary service. These actions are consistent with Commission precedent setting clear limitations and boundaries on secondary service interference claims. Under the LPFM service rules, for example, a full power station is only protected from LPFM interference to its 70 dBu contour. This limitation is designed to promote a ''stable and enduring'' LPFM service. For the same reason, the measures taken in the *R&O* provide certainty and clarity for translator stations without eliminating the right of primary stations to be protected from harmful interference to their core listenership.

24. Likewise, the Commission explains that establishment of an outer contour limit does not conflict with LCRA section 5(3), which requires that when licensing new translator stations, the Commission must ensure that translator, booster, and LPFM stations ''remain equal in status and secondary to existing and modified full-service FM stations.'' It is well established that the LCRA does not require identical regulation of each secondary service, and in any case, because the LPFM service rules contain a similar contour-based restriction on interference complaints, the establishment of an outer contour limit on translator interference complaints brings the translator rules into closer harmony with the LPFM rules.

25. Applications or complaints that have not been acted upon as of the effective date of the rules adopted in this *R&O* will be decided based on the new rules. If necessary, parties will be given an opportunity to submit supplemental materials to address the revised rules adopted herein.

26. Finally, as a non-substantive clarification, the Commission deletes the two clauses partially enumerating services in §§ 74.1203(a)(3) and 74.1204(f) of the Rules, and states instead that the relevant rules apply to all full-service stations and previously authorized secondary service stations.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM.* The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. Because the Commission amended the rules in this *R&O,* it included this Final Regulatory Flexibility Analysis (FRFA) which conforms to the RFA.

Need for and Objectives of the R&O

In the *R&O,* the Commission adopted rules to clarify and streamline the FM translator interference claim and

remediation process. The Commission notes that the current process can be time-consuming, contentious, and expensive for the parties involved. Therefore, as proposed in the *NPRM,* the Commission adopts the following measures:

- Allowing translator operators to remediate interference either caused to or received from another broadcast station by changing channels to any available same-band frequency as a minor change. The required showing for such a minor change application is an engineering statement of mitigation of interference at the requested frequency.
- Establishing the required contents for a translator interference claim submitted by the affected station, including: (1) A minimum number of listener complaints ranging from 6 to a cap of 25 depending on the population within the complaining station's protected contour; (2) a map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (3) a statement that the complaining station is operating within its licensed parameters; (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) data demonstrating that the undesired to desired (U/D) signal strength at each listener location exceeds certain ratios.
- Eliminating the requirement that listener complainants must cooperate with the translator operator to resolve interference. If a listener-based solution is not possible or desired by the listener, the translator and complaining station must work together to achieve a technical solution to the interference within the time frame set by Commission staff.
- Establishing a full power FM, LPFM, FM translator, or FM booster station's 45 dBu signal strength contour as the limit to which it may claim interference to its listeners from an FM translator. This outer contour limit applies to both actual and predicted interference claims.
- Establishing criteria for evaluating requests for waiver of the 45 dBu contour limit.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No formal comments were filed on the IRFA but some commenters raised issues concerning the impact of the various proposals in this proceeding on small entities. These comments were considered in the *R&O* and in the FRFA.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

No comments were filed on the IRFAs by the Small Business Administration.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

Radio Stations. This economic Census category ''comprises establishments primarily engaged in broadcasting aural programs by radio to the public.'' The SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. Census data for 2012 shows that 2,849 firms in this category operated in that year. Of this number, 2,806 firms had annual receipts of less than $25,000,000, and 43 firms had annual receipts of $25,000,000 or more. Because the Census has no additional classifications that could serve as a basis for determining the number of stations whose receipts exceeded $38.5 million in that year, the Commission concludes that the majority of radio broadcast stations were small under the applicable SBA size standard.

Apart from the U.S. Census, the Commission has estimated the number of licensed commercial AM radio stations to be 4,619 stations and the number of commercial FM radio stations to be 6,754, for a total number of 11,373. Of this total, 9,898 stations had revenues of $38.5 million or less, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) in October 2014. In addition, the Commission has estimated the number of noncommercial educational (NCE) FM radio stations to be 4,135. NCE stations are non-profit, and therefore considered to be small entities. Therefore, the Commission estimates that the majority of radio broadcast stations are small entities.

Low Power FM Stations. The same SBA definition that applies to radio stations would apply to low power FM stations. As noted above, the SBA has created the following small business size standard for this category: Those having $38.5 million or less in annual receipts. The Commission has estimated the number of licensed low power FM stations to be 2,172. In addition, as of December 31, 2018, there were a total of 7,952 FM translator and FM booster stations. Given that low power FM stations and FM translators and boosters are too small and limited in their operations to have annual receipts anywhere near the SBA size standard of $38.5 million, we will presume that these licensees qualify as small entities under the SBA definition.

The Commission notes again, however, that in assessing whether a business concern qualifies as ''small'' under the above definition, business (control) affiliations must be included. Because the Commission does not include or aggregate revenues from affiliated companies in determining whether an entity meets the applicable revenue threshold, its estimate of the number of small radio broadcast stations affected is likely overstated. In addition, as noted above, one element of the definition of ''small business'' is that an entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio broadcast station is dominant in its field of operation. Accordingly, its estimate of small radio stations potentially affected by the proposed rules includes those that could be dominant in their field of operation. For this reason, such estimate likely is over-inclusive.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

The *R&O* adopts the following revised reporting or recordkeeping requirements. FM translator operators seeking to remediate interference by changing channels to any available same-band frequency as a minor change will be required to submit an FCC Form 349, ''Application for Authority to Construct or Make Changes in an FM Translator, or FM Booster Station,'' including an engineering statement of mitigation of interference at the requested frequency.

Any broadcasting station complaining of interference to or from an FM translator station pursuant to either § 74.1203(a)(3) or § 74.1204(f) must submit to the Commission: (1) A minimum number of listener complaints

ranging from 6 to 25 depending on the population covered by the complaining station's protected contour; (2) a map plotting the specific locations of the alleged interference in relation to the 45 dBu contour of the complaining station; (3) a statement that the complaining station is operating within its licensed parameters; (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) U/D data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds −20 dB for co-channel situations, −6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology.

A listener complaint is defined as a complaint that is signed and dated by the listener and contains the following information: (1) The complainant's full name, address, and phone number; (2) a clear, concise, and accurate description of the location where the interference is alleged to occur; (3) a statement that the complainant listens to the desired station using an over-the-air signal at least twice a month, to demonstrate the complainant is a regular listener; and (4) a statement that the complainant has no legal, employment, financial, or familial affiliation or relationship with the desired station, to demonstrate the complainant is disinterested.

Translator operators that choose to remediate interference by adjusting or replacing listener equipment, with the consent of the listener, must document and submit to the Commission that the adjustment or new equipment resolved the interference. Alternatively, for each listener complaint, the translator operator and complaining station must work together to reach a technically-based resolution to the interference and jointly report such resolution to the Commission. In some cases, the Commission may require submission of a remediation plan at the outset of the interference resolution process.

Translator operators seeking waiver of the 45 dBu contour limit on listener complaints must submit a showing of special circumstances and that such waiver is in the public interest, including a minimum of 20 listener complaints from outside the 45 dBu contour and other relevant factors.

These new reporting requirements will not differently affect small entities.

Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

The new rules regarding FM translator interference are designed to allow all entities, including small entity broadcasters, to resolve translator interference in a manner that is streamlined and the least burdensome. These measures are intended to provide clarity and certainty in a way that will benefit all broadcasters. In addition, the minimum number of listener complaints required to establish FM translator interference is scaled to reflect the population within the complaining station's protected contour. In many cases, therefore, a smaller station will be required to submit fewer listener complaints. Finally, LPFM stations, which tend to be smaller operators, have the lowest listener complaint minimum, at three listener complaints.

Report to Congress

The Commission will send a copy of this *R&O,* including this FRFA, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *R&O,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 74

FM radio broadcast services, Communications equipment, Education, Reporting, Federal Communications Commission.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons set forth in the preamble, the Federal Communications Commission amends part 74 of title 47 of the Code of Federal Regulations as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 1. The authority citation for part 74 continues to read:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

■ 2. Amend § 74.1201 by adding paragraph (k) to read as follows:

§ 74.1201 Definitions.

* * * * *

(k) *Listener complaint.* A statement that is signed and dated by the listener and contains the following information:

(1) The complainant's full name, address, and phone number;

(2) A clear, concise, and accurate description of the location where interference is alleged or predicted to occur;

(3) A statement that the complainant listens over-the-air to the desired station at least twice a month; and

(4) A statement that the complainant has no legal, financial, employment, or familial affiliation or relationship with the desired station.

■ 3. Amend § 74.1203 by revising paragraphs (a)(3) and (b) to read as follows:

§ 74.1203 Interference.

(a) * * *

(3) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the channel on which the protected signal is transmitted; except that no listener complaint will be considered actionable if the alleged interference occurs outside the desired station's 45 dBu contour. Interference is demonstrated by:

(i) The required minimum number of valid listener complaints as determined using Table 1 of this section and defined in § 74.1201(k) of the part;

(ii) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBu contour;

(iii) A statement that the complaining station is operating within its licensed parameters;

(iv) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed

interference and attempted private resolution; and

(v) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds −20 dB for co-channel situations, −6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology set out in § 73.313.

TABLE 1 TO § 74.1203(a)(3)

Population within protected contour	Minimum listener complaints required for interference claim
1–199,999	6
200,000–299,999	7
300,000–399,999	8
400,000–499,999	9
500,000–999,999	10
1,000,000–1,499,999	15
1,500,000–1,999,999	20
2,000,000 or more	25
LPFM stations with fewer than 5,000	3

(b) If interference cannot be properly eliminated by the application of suitable techniques, operation of the offending FM translator or booster station shall be suspended and shall not be resumed until the interference has been eliminated. Short test transmissions may be made during the period of suspended operation to check the efficacy of remedial measures.

* * * * *

■ 4. Amend § 74.1204 by revising paragraph (f) to read as follows:

§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.

* * * * *

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations within the 45 dBu field strength contour of the desired station. Interference is demonstrated by:

(1) The required minimum number of valid listener complaints as determined using Table 1 to § 74.1203(a)(3) and defined in § 74.1201(k) of the part;

(2) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBu contour;

(3) A statement that the complaining station is operating within its licensed parameters;

(4) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and

(5) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds −20 dB for co-channel situations, −6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology set out in § 73.313.

* * * * *

■ 5. Amend § 74.1233 by revising paragraph (a)(1) to read as follows:

§ 74.1233 Processing FM translator and booster station applications.

(a) * * *

(1)(i) In the first group are applications for new stations or for major changes in the facilities of authorized stations. For FM translator stations, a major change is:

(A) Any change in frequency (output channel) except—

(*1*) Changes to first, second or third adjacent channels, or intermediate frequency channels; or

(*2*) Upon a showing of interference to or from any other broadcast station, remedial changes to any same-band frequency; or

(B) Any change in antenna location where the station would not continue to provide 1 mV/m service to some portion of its previously authorized 1 mV/m service area. In addition, any change in frequency relocating an unbuilt station from the non-reserved band to the reserved band, or from the reserved band to the non-reserved band, will be considered major. All other changes will be considered minor.

(ii) All major changes are subject to the provisions of §§ 73.3580 and 1.1104 of this chapter pertaining to major changes.

* * * * *

[FR Doc. 2019–12127 Filed 6–13–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 190312234–9412–01]

RIN 0648–GAR–A005

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

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 Massachusetts. 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 Massachusetts.

DATES: Effective June 13, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

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 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 3,875 lb (1,758 kg) of summer flounder commercial quota to Massachusetts through mutual agreement of the states. This transfer was requested to repay landings made by a North Carolina-permitted vessel in Massachusetts under a safe harbor agreement. Based on the revised Summer Flounder, Scup, and Black Sea Bass Specifications, the revised summer flounder quotas for fishing year 2019 are now: North Carolina, 2,970,242 lb (1,347,279 kg); and Massachusetts, 745,407 lb (338,110 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 10, 2019.

Alan D. Risenhoover,

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

[FR Doc. 2019–12523 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 115
Friday, June 14, 2019

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 278

RIN 0584–AE61

Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program; Reopening of Comment Period

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Nutrition Service (FNS, or the Agency) proposed to make changes to the Supplemental Nutrition Assistance Program (SNAP) regulations pertaining to the eligibility of certain SNAP retail food stores in a document published on April 5, 2019. FNS inadvertently excluded from publication two supporting documents to the proposed rule, the Regulatory Impact Analysis and the Regulatory Flexibility Analysis. These have now been published as part of the docket for the proposed rule. The agency is extending the comment period to provide the public an opportunity to review and provide comment on these documents as part of the rulemaking record. This document reopens the comment period until June 20, 2019.

DATES: The comment period for the information collection requirements published on April 5, 2019, 84 FR 13555, has been reopened from June 14, 2019 through June 20, 2019. To be assured of consideration, comments must be received on or before June 20, 2019.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method: Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Vicky Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, FNS, 3101 Park Center Drive, Room 418, Alexandria, Virginia 22302.
- All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky Robinson, Chief, Retailer Management and Issuance Branch, Retailer Policy and Management Division, FNS, 3101 Park Center Drive, Room 418, Alexandria, Virginia 22302; telephone 703–305–2476, email: *vicky.robinson@usda.gov.*

SUPPLEMENTARY INFORMATION: FNS proposes to make changes to the SNAP regulations pertaining to the eligibility of certain SNAP retail food stores. These proposed changes are in response to the Consolidated Appropriations Acts of 2017 and 2018, which prohibited the U.S. Department of Agriculture (USDA) from implementing two retailer stocking provisions (the ''Breadth of Stock'' provision and the ''Definition of 'Variety' '' provision) of the 2016 final rule titled, ''Enhancing Retailer Standards in the Supplemental Nutrition Assistance Program (SNAP)'', until such a time as regulatory modifications to the definition of ''variety'' are made that would increase the number of food items that count as acceptable staple food varieties for purposes of SNAP retailer eligibility. Using existing authority in the Food and Nutrition Act of 2008, the Agency proposes to modify the definition of the term ''variety'' as it pertains to the stocking requirements for SNAP authorized retail food stores. FNS inadvertently excluded from publication on *www.regulations.gov* two supporting documents to the proposed rule, the Regulatory Impact Analysis and the Regulatory Flexibility Analysis. These have now been published as part of Docket FNS–2019–0003. The agency is extending the comment period to provide the public an opportunity to review and provide comment on these documents as part of the rulemaking record. For additional information, see the proposed rule published April 5, 2019 (84 FR 13555).

Dated: June 7, 2019.

Brandon Lipps,

Administrator, Food and Nutrition Service.

[FR Doc. 2019–12630 Filed 6–13–19; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0437]

RIN 1625–AA08

Special Local Regulations, Upper Mississippi River, Mile Markers 839 to 840 St. Paul, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary Special Local Regulation for the navigable waters of the Upper Mississippi River between mile marker (MM) 839 and MM 840 in St. Paul, MN on September 7, 2019 in order to provide for the safety of life on these waters during a Red Bull Flugtag event. This proposed rulemaking would prohibit persons and vessels from entering and operating between MM 839 and MM 840 of the Upper Mississippi River during the event unless authorized by the Captain of the Port Upper Mississippi River (COTP) or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 15, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0437 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander Christian Barger, Waterways Management Division, Sector Upper Mississippi River, U.S. Coast Guard; telephone 314–269–2560, email *Christian.J.Barger@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Upper Mississippi River
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On May 15, 2019, Red Bull North America notified the Coast Guard that it will be holding a Red Bull Flugtag event on the Upper Mississippi River at Harriett Island Park in St. Paul, MN from 11 a.m. to 4 p.m. on September 7, 2019. Flugtag is a homemade, non-powered flying machine competition. Contestants launch their machines from a 22 feet high platform built over the Upper Mississippi River. Potential hazards from this event include the temporary installation of a structure along the right descending bank of the river, temporary channel obstructions until the Flugtag machines are recovered from the river, and the presence of debris and persons in the water within the event perimeter. The Captain of the Port Sector Upper Mississippi River (COTP) has determined that the potential hazards associated with the event would be a safety concern for persons and vessels in proximity of the event area. The purpose of this rulemaking is to ensure the safety of persons and vessels on these navigable waters before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP proposes to establish Special Local Regulations from 10 a.m. to 5 p.m. on September 7, 2019. The Special Local Regulations would be in effect for all navigable waters of the Upper Mississippi River between Mile Marker (MM) 839 and MM 840. The duration of the zone is intended to ensure the safety of vessels and these waters before, during, and after the scheduled 11 a.m. to 4 p.m. competition. No vessel or person would be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the proposed rule. The safety zone would restrict navigation on a one mile stretch of the Mississippi River from MM 839 to MM 840 for seven hours on one day. Additionally, this regulatory action will permit persons and vessels to seek permission to enter the regulated area from the COTP on a case-by-case basis.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of Special Local Regulations from 10 a.m. to 5 p.m. on September 7, 2019. The Special Local Regulations would be effective on all navigable waters of the Upper Mississippi River between MM 839 and MM 840. Normally such actions are categorically excluded from further review under paragraph L60(a) in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T08–0437 to read as follows:

§ 100.T08–0437 Special Local Regulations; Upper Mississippi River, Mile Markers 839 to 840 St. Paul, MN

(a) *Location.* The following Special Local Regulations are in effect for all navigable waters of the Upper Mississippi River between mile marker (MM) 839 and MM 840.

(b) *Period of enforcement.* This section will be enforced from 10 a.m. through 5 p.m. on September 7, 2019.

(c) *Regulations.* (1) The Coast Guard may patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.''

(2) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The ''official patrol vessels'' consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Captain of the Port Sector Upper Mississippi River, to patrol the event.

(3) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(4) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(5) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) Any spectator vessel may anchor outside the regulated area specified in Table 1 of this section, but may not anchor in, block, or loiter in a navigable channel.

(7) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(8) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

S.A. Stoermer,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2019–12484 Filed 6–13–19; 8:45 am]

BILLING CODE 9110–04–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Chapter 7

RIN 0412–AA94

U. S. Agency for International Development Acquisition Regulation (AIDAR): Designation of Personal Services Contractors (PSCs) as Contracting Officers and Agreement Officers

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) proposes to amend the Agency for International Development Acquisition Regulation (AIDAR) to allow for the designation of U.S. Personal Services Contractors (US PSCs) and Cooperating Country National Personal Services Contractors (CCN PSCs) as contracting officers and agreement officers. The proposed revisions will address a shortage of U.S. direct-hire staff by delegating the proposed authorities to qualified US and CCN PSCs. The delegation of limited contracting/agreement officer authorities to a select number of CCN PSCs will also bolster the Agency to succeed in terms of building long-term, host country technical capacity to materially assist the Missions with procurement responsibility.

DATES: Comments must be received no later than August 13, 2019.

ADDRESSES: Address all comments concerning this notice to Anne Sattgast, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867–D, SA–44, Washington, DC 20523–2052. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

1. Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

2. *By Mail addressed to:* USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867–D, SA–44, 1300 Pennsylvania Ave. NW, Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Anne Sattgast, Telephone: 202–567–5094 or Email: *asattgast@usaid.gov*.

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the Addresses section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington.

At the end of the comment period and until finalization of the action, all comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute. USAID will only address substantive comments on the rule. Comments that are insubstantial or outside the scope of the rule may not be considered.

B. Background

On August 19, 2016 USAID published a proposed rule at 81 FR 55405 revising the U.S. Agency for International Development Acquisition Regulation (AIDAR) to incorporate the USAID Cooperating Country National Warrant Program into the regulation. The proposed rule was subsequently withdrawn on June 23, 2017, at 82 FR 28617, due to changes in the regulatory requirements and processes.

USAID has further analyzed the need for contracting/agreement officers and has determined that the ability to designate both US PSCs and CCN PSCs as contracting/agreement officers would be a benefit to the Agency. It would relieve USAID staff from the administrative burden of processing deviations and exceptions currently required in Agency regulation and ultimately result in cost savings to the Agency.

USAID is seeking comments on the proposed rule as described below:

Designation of U.S. personal services contractors as contracting officers and agreement officers.

The U.S. Agency for International Development (USAID) is located in offices in over 80 countries with programs in over 100 nations. USAID operates in a fluid environment responding to a myriad of crises such as war, natural disasters, epidemics, as well as working towards its long term mission of reducing poverty, strengthening democratic governance, and helping people emerge from humanitarian crises and progress beyond assistance.

The current warranted work force to manage these efforts consists of 120 US direct-hire foreign service officers overseas, 84 direct-hire civil service officers, 63 warranted foreign service executive officers, 10 warranted US PSCs, and eleven warranted CCN PSCs. Additionally, the foreign service contracting staff has one of the highest attrition rates in USAID's work force that needs to be supplemented by additional personnel. There has been a decrease of over 20% in the Agency's direct-hire contracting officer staff from 2016 to 2018. The ability to designate US PSCs as contracting/agreement officers will help offset this decrease in the number of warranted direct-hire civil service and foreign service employees and increase the capacity of the Agency's acquisition workforce to process actions in an expeditious manner.

Currently, a US PSC can be designated as a contracting officer only when a deviation from AIDAR 701.603–70 is approved; and when the Assistant Administrator for the Bureau for Management (AA/M) approves an exception in accordance with AIDAR Appendix D 4(b)(3)e. The proposed rule will also reduce the administrative burden on Management Bureau employees in processing requests for deviations and exceptions, allowing them to focus on other priorities.

US PSCs will be designated as contracting/agreement officers similar to the direct-hire employees upon meeting the requirements in FAR subpart 1.6 and the Agency's warrant program requirements.

Designation of Cooperating Country Nationals personal services contractors as contracting officers and agreement officers.

In 2011, USAID approved a two-year Worldwide CCN Administrative Contracting and Agreement Officer (ACO/AAO) Pilot Warrant Program. The purposes of this program were to address the shortage of USAID contracting/agreement officers, alleviate the workload of contracting/agreement officers, and build long-term, host country technical capacity to materially assist the Missions with procurement responsibility.

USAID made a strategic decision to create a cadre of highly qualified CCN PSCs, who demonstrated high potential for assuming responsibilities to serve as administrative contracting/agreement officers within designated Missions. The program evolved into a permanent program in 2014, as detailed below. During the two phases of the program, USAID has issued a total of 12 CCN warrants. Currently, there are eight warranted CCN administrative contracting/agreement officers. By the end of calendar year 2018, the Agency anticipates that there will be approximately 10 warranted CCN PSCs contracting/agreement officers. While a seemingly small number, it would represent a five percent increase in USAID's overseas US direct-hire warranted contracting/agreement officers.

When designing the CCN Pilot Warrant Program, USAID consulted with the Senior Procurement Executive

at the State Department and the USAID employee unions. The State Department's SPE advised that State conducted a similar pilot several years ago, to great success. They now have a permanent program that extends limited authority to their locally-employed staff in selected countries. The vice president of the American Foreign Service Association concurred with the Pilot, and was pleased by several of its protections.

Based on that two-year pilot program, revisions were made to the program structure to better suit the Agency's needs before the permanent program was launched in September 2014. USAID eliminated the portion of the program that allowed for third country nationals to receive warrants. Participation was broadened by the revision of qualifications and inclusion of full obligation warrant authority up to the simplified acquisition threshold of $150,000 per transaction and an annual cumulative amount of $1 million at the potential CCN Grade 13 Level to assist the Missions' procurement function. To mitigate CCN inexperience from leading to mistakes or malfeasance, the revised 2014 CCN Warrant Program included three levels of obligation authority and non-monetary administrative responsibility correlating to CCN grade/experience within the acquisition backstop. Increasing degrees of responsibility and/or obligation authority, as applicable, were granted. The levels of contracting/agreement officer responsibilities designated to a CCN was based on the needs of each mission, complexity and dollar value of the acquisitions, and the individual's experience, training, education, business acumen, judgment, reputation and grade level.

After implementing the 2014 CCN PSC warrant program for almost six years (including the pilot period before 2014), USAID is further revising the program based on Agency needs, experience with the current program, and in response to public comments received under the proposed rule at 81 FR 55405 published in the **Federal Register** on August 19, 2016. The new program will have a single warrant level that will combine the first two warrant levels from the 2014 program. This new warrant level will be available to qualified CCN PSCs at specific grade levels who meet training, years of experience, and education requirements. This warrant authority delegates select contract administration functions listed in (48 CFR) FAR 42.302(a), including, for example, conducting post-award orientation conferences, approving contractors' requests for payments under the progress payments or performance-based payments clauses. This warrant authority will also include the ability to obligate incremental funding of any amount within the scope and total estimated cost of a contract (to include task orders and purchase orders). This change in the CCN warrant program also responds to a request from some USAID Missions, where assistance with incremental-funding actions is needed.

The revised warrant program also eliminates the third warrant level set at the simplified acquisition threshold. This change responds to several public comments received under the proposed rule at 81 FR 55405 published in the **Federal Register** on August 19, 2016. Authorizing CCNs to execute new awards on behalf of the U.S. Government had inherent risks that could not be sufficiently mitigated. As such, USAID decided to eliminate the simplified acquisition threshold warrant. Additionally, no simplified acquisition threshold warrants had been issued under the 2014 CCN warrant program.

Analysis of risk associated with designating Non-U.S. citizens as contracting and agreement officers.

While many CCNs that work for USAID do so for many years with demonstrated commitment to the United States mission in their country, non-U.S. citizens with contracting officer authorities inherently present additional risks, including litigation risk for the Government. Since CCNs are ingrained in their communities and economic markets, there can be greater risk of procurement integrity issues with taxpayer funds or local suits brought directly against the CCN for actions taken in their official capacity. In suits against the U.S., a CCN might have less incentive to act as a witness for the Government's defense as a non-citizen. Prior to establishing the permanent CCN warrant program, the Agency reviewed additional risks associated with issuing contracting/agreement officer warrants to non-U.S. citizens who are not direct-hire employees of USAID. In particular, such factors as proper accountability, adequate security considerations, conflicts of interest, and appropriate legal jurisdiction over the employee were considered. Adequate management controls and warrant limitations established under the CCN PSC warrant program, as discussed below, were established to mitigate such risks.

To address the risks associated with adequate accountability, commitment to USAID, and conflict of interest, the warrant program requires candidates for the CCN PSC warrant program to show commitment to the profession and USAID by meeting stringent acquisition competencies, education and training requirements. In addition to meeting these requirements, potential candidates must have extensive experience in direct U.S. Federal Government contracting/assistance and clearly demonstrate professional and ethical behavior. When reviewing applications for a CCN PSC warrant, the Agency contacts past performance references (typically, the candidate's last three Supervisory Contracting Officers) and any other sources deemed appropriate for signs of potential risks or cautions that may be detrimental to the responsibilities inherent in this Program. The candidate's supervisor must also attest to the candidate's education, training, experience, business acumen, judgment, character, reputation and ethical behavior.

Additionally, the Program requires the CCN contracting officer's supervisor to closely and frequently monitor the CCN PSC's work and review performance and progress every six months. The review includes an assessment of all actions where the warrant was used. This review is followed by periodic reviews conducted by the Bureau for Management, Office of Acquisition and Assistance, Evaluation Division, which is responsible for the program implementation.

Warranted CCN PSCs will support the functions of the overseas Mission's Office of Acquisition & Assistance (A&A), which typically include acquisition and assistance awards implementing the Agency's foreign assistance programs and activities. In part to mitigate litigation risks, warranted CCN PSCs are currently not delegated authority to make new awards or execute any personal services contracts. The program also limits delegated authority for select contract administration functions listed in (48 CFR) FAR 42.302(a), specifically, the contracting officer functions in which disputes or possible legal challenges may arise due to decisions of the contracting officer, functions related to novation and contractor name changes, which may be a result of changes in a contractor's business structure as governed under applicable U.S. state law and other functions based on U.S. state laws, functions related to small business contracting matters and those requiring extensive knowledge of specific U.S. laws and government-wide policies not specifically related to contracting. Accordingly, the functions specified in items 5–7, 9–12, 18, 21–26, 29, 32, 50, 52–55, 62–63, 66 and 68–71 of (48 CFR) FAR 42.302(a) will not be

redelegated to CCN PSC contracting officers.

To address conflict of interest and procurement integrity concerns, the program relies on the standard clause entitled ''Compliance with Laws and Regulations Applicable Abroad'', included in all personal services contracts with CCNs, that mandates compliance with the Standards of Conduct for Executive Branch Employees. These standards, available at *https://www2.oge.gov/web/oge.nsf/All%20Documents/5D633072D0B2DB5085257E96006A90E7?opendocument,* contain two provisions addressing financial interests that conflict with an individual's official duties. The first provision, entitled ''Disqualifying financial interests,'' prohibits an employee from participating in an official government capacity in a matter in which he has a financial interest or in which his spouse, minor child, employer, or any one of several other specified persons has a financial interest. The second provision, entitled ''Prohibited financial interests,'' contains authority by which agencies may prohibit employee from acquiring or retaining certain financial interests.

To address the security concerns, the Program uses the current process, in which the USAID Office of Security and Department of State Office of Security conduct background checks on potential personal service contractors.

Recognizing the fact that some countries may not have adequate legal systems or may be unwilling to provide assistance in prosecuting or defending their citizens for alleged U.S. procurement infractions, the CCN PSC Warrant Program established the following management controls designed to minimize the risk that such legal actions might be necessary:

—Stringent eligibility criteria,
—Inability for CCN PSCs to enter into new awards,
—CCN participation in this program is limited to two candidates per overseas mission. This limitation may be expanded only if it is deemed by the Senior Procurement Executive to be in the best interest of the Agency.
—Ongoing risk assessments are performed throughout the Program implementation to assure compliance with the program requirements. The warrant program may be revised as a result of these assessments.

Regulatory authorities and limitations.

(48 CFR) FAR part 1 establishes the authority for Agency heads to select and appoint contracting officers and it does not specify that contracting officers must be U.S. citizen direct-hire employees of the Federal government. (48 CFR) FAR subpart 7.5 includes contracting officer duties in the list of inherently governmental functions or functions that must be treated as such, but does not exclude personal services contractors hired under a statutory authority from performing such functions.

(48 CFR) AIDAR 701.603–70 currently limits delegations of contracting officer authorities to U.S. citizen direct-hire employees of the U.S. Government as a matter of Agency policy. However, section 4(b)(3) of (48 CFR) AIDAR Appendix D and the corresponding section of Appendix J contain an exception for PSCs to be delegated authority to sign obligating and subobligating documents with approval from the Assistant Administrator for the Bureau of Management.

In September 2014, USAID issued a two-year class deviation from 48 CFR AIDAR 701.603–70 to establish the permanent CCN PSC warrant program to allow a limited number of selected and qualified CCN PSCs to be delegated contracting officer authorities. In conjunction with the approval of the class deviation described above, the Assistant Administrator for the Bureau for Management (AA/M) approved a class exception to the limitations in (48 CFR) AIDAR Appendix J4(b)(3). Subsequent two-year class deviations were issued for the CCN warrant program in September 2016 and September 2018. The September 2018 class deviation also allows for the designation of US PSCs as contracting officers without requiring prior approval from AA/M. By this rule USAID is proposing to revise (48 CFR) AIDAR to permanently authorize delegation of contracting/agreement officer authorities to a limited number of selected and qualified US PSCs and CCN PSCs.

USAID is seeking public comments on the proposed changes to the AIDAR. These proposed changes will eliminate the need for an exception from AA/M currently required before the Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) can designate qualified US and CCN PSCs as contracting/agreement officers. The proposed changes also eliminate the need for a class deviation from AIDAR 701.603–70. As the M/OAA Director both approves AIDAR class deviations and delegates individual warrant authority this proposed change will eliminate a redundancy in the designation of qualified US and CCN PSCs as contracting/agreement officers.

C. Impact Assessment

(1) Regulatory Planning and Review. Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) has determined this regulatory action is ''significant'' and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). OIRA has determined that this Rule is not an ''economically significant regulatory action'' under Section 3(f)(1) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

This rule codifies the Agency's deviation from the current rule in the CFR. The costs calculated in this section are based on conservative estimates to illustrate the impact of these revisions from the baseline costs of the current rule. The proposed rule's cost benefit is due to the ability to designate CCN PSCs as Contracting Officers, eliminating the need to assign a warranted Foreign Service Officers (FSOs) to a Mission. It costs the Agency approximately an average of $250,000 per year to post a warranted FSO to a Mission. This figure is based upon the Foreign Service pay scale and data from the Department of State's Office of Allowances.

The Agency's warranted FSO staff is comprised of individuals at the FS–4 to the FS–1 grade levels with the majority at the FS–2 and FS–3 grade levels. The $250,000 figure assumes a base salary of $100,000, which is within an average range of the FS–2 and FS–3 grade levels. An FSO's annual compensation and benefits package easily exceeds this base salary and can vary based upon the FSO's number of dependents and a variety of allowances that may be claimed including cost of living allowance, post differential, danger pay, separate maintenance allowance, housing allowance, education allowance, home leave, etc. Based upon data pulled from the Department of State's Office of Allowances, $250,000 per annum is considered a conservative estimate of the cost to field a warranted FSO. Given that the Agency currently has eleven warranted CCN PSCs, this eliminates the need to post the equivalent number of warranted FSOs, resulting in annual cost savings to the Agency of approximately $2.75 million.

The ability to issue a warrant to PSCs does not result in any increase in costs to the Agency. Eligible CCN PSCs live in country and are already working at the Missions. There is also no additional cost to the Agency to process a PSC warrant as compared to a US direct-hire employee.

As a regulatory matter, the cost of the rule making process to incorporate these

revisions into the regulation is justified. The Agency requires these revisions in order to eliminate the administrative burden of processing deviations and exceptions and to realize a cost savings resulting from the ability to issue CCN PSCs warrants.

(2) Regulatory Flexibility Act. The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(3) Paperwork Reduction Act. The proposed rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 701 and Appendices D and J to Chapter 7

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR Chapter 7 as set forth below:

■ 1. The authority citation for 48 CFR 7 part 701 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.6—Career Development, Contracting Authority, and Responsibilities

■ 2. Revise 701.603–70 to read as follows:

701.603–70 Designation of contracting officers.

A contracting officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The contracting officer's duties are sensitive, specialized, and responsible. To ensure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, USAID contracting officers must be U.S. citizen direct-hire employees of the U.S. Government. However, Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) may also designate a U.S. Personal Services Contractor (USPSC) or a Cooperating Country National Personal Services Contractor (CCNPSC) as a contracting officer with a specific level of warrant authority. To qualify for a designation as a contracting officer, an individual must meet the requirements in FAR subpart 1.6 and the Agency's applicable warrant program.

■ 3. In appendix D to chapter 7, revise paragraph 4(b)(3)b. and add paragraph (b)(4) to read as follows:

Appendix D to Chapter 7—Direct USAID Contracts With a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad

4—Policy * * *

(b) * * *

(3) * * *

b. They may not be delegated authority to sign obligating or subobligating documents except when specifically designated as a contracting officer or an agreement officer in accordance FAR subpart 1.6 and the Agency's applicable warrant program.

* * * * *

(4) *Exceptions.* The Assistant Administrator Bureau for Management (AA/M) must approve exceptions to the limitations in paragraph (b)(3). Approval of an exception by the AA/M is not required when the Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) designates a USPSC as a contracting officer or an agreement officer.

* * * * *

■ 4. In appendix J to chapter 7, under the heading ''4. Policy,'' revise paragraphs (b)(3)b. and (b)(4) to read as follows:

Appendix J to Chapter 7—Direct USAID Contracts With a Cooperating Country National and With a Third Country National for Personal Services Abroad

* * * * *

4—Policy

* * * * *

(b) * * *

(3) * * *

b. They may not be delegated authority to sign obligating or subobligating documents except when a cooperating country national personal services contractor is specifically designated as a contracting officer or an agreement officer in accordance FAR subpart 1.6 and the Agency's applicable warrant program.

* * * * *

(4) *Exceptions.* The Assistant Administrator Bureau for Management (AA/M) must approve exceptions to the limitations in paragraph (b)(3). Approval of an exception by the AA/M is not required when the Director, Bureau for Management, Office of Acquisition and Assistance (M/OAA Director) designates a cooperating country national personal services contractor as a contracting officer or an agreement officer.

* * * * *

Mark Walther,

Acting Chief Acquisition Officer.

[FR Doc. 2019–12270 Filed 6–13–19; 8:45 am]

BILLING CODE 6116–01–P

Notices

Federal Register
Vol. 84, No. 115
Friday, June 14, 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.

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New Mexico Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act (FACA) that a meeting of the New Mexico Advisory Committee will be held from 1:00 p.m. to 4:00 p.m. (Mountain Time) on Tuesday, June 28, 2019. The purpose of the meeting is for the Committee to hear expert briefing testimony on wage-related issues in the state.

DATES: The meeting will be held on Friday, June 28, 2019, from 1:00 p.m. to 4:00 p.m. Mountain Time. Location: University of New Mexico School of Law, Room 2403, 1117 Stanford Drive NE, Albuquerque, NM 87106.

FOR FURTHER INFORMATION CONTACT: Alejandro Ventura at *aventura@usccr.gov* or (213) 894–3437.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Persons with disabilities requiring reasonable accommodations should contact the Western Regional Office at least 7 days prior to the meeting to make appropriate arrangements. Members of the public are invited to make statements during an open comment period, beginning at 2:30 p.m. In addition, members of the public may submit written comments; the comments should be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed to Alejandro Ventura at *aventura@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Roll Call
II. Briefing on Wage-Related Issues in New Mexico
  a. Amber Fayerberg and/or Richard Branch, New Mexico Department of Workforce Solutions
  b. Serge Martinez, University of New Mexico School of Law
  c. Stephanie Welch, New Mexico Center on Law and Poverty
III. Question and Answer Session with Panelists
IV. Public Comments
V. Committee Planning Discussion of Wage Study and Next Steps
VI. Adjournment

Dated: June 10, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–12520 Filed 6–13–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Friday June 21, 2019, from 3–4 p.m. EDT for the purpose of discussing civil rights in the state.

DATES: The meeting will be held on Friday June 21, 2019, from 3–4 p.m. EDT.

Public Call Information: Dial: 855–719–5012; Conference ID: 6760073.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Members of the public may join through the above listed toll free call in number. Members of the public will be invited to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://*

www.usccr.gov, or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion: Lead Poisoning of Indiana's Children
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of Community forum preparations and DFO/Committee member availability.

Dated: June 11, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–12617 Filed 6–13–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Indiana Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Indiana Advisory Committee (Committee) will hold a meeting on Monday July 22, 2019, from 3–4 p.m. EDT for the purpose of discussing civil rights in the state.

DATES: The meeting will be held on Monday July 22, 2019, from 3–4 p.m. EDT.

Public Call Information: Dial: 855–719–5012; Conference ID: 1197182.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. Members of the public may join through the above listed toll free call in number. Members of the public will be invited to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Indiana Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Welcome and Introductions
Discussion: Lead Poisoning of Indiana's Children
Public Comment
Adjournment

Dated: June 11, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–12613 Filed 6–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

First Responder Network Authority

First Responder Network Authority Combined Committee and Board Meeting

AGENCY: First Responder Network Authority (FirstNet Authority), U.S. Department of Commerce.

ACTION: Notice of public meeting of the First Responder Network Authority Board.

SUMMARY: The Board of the First Responder Network Authority (Board) will convene an open public meeting of the Board and the Board Committees on June 26, 2019.

DATES: A joint meeting of the four FirstNet Authority Board Committees and the FirstNet Authority Board will be held on June 26, 2019, between 10:00 a.m. and 12:30 p.m. (EDT). The meeting of the FirstNet Authority Board and the Governance and Personnel, Technology, Public Safety Advocacy, and Finance Committees will be open to the public from 10:00 a.m. to 12:30 p.m. (EDT).

ADDRESSES: The meeting on June 26, 2019 will be held at the JW Marriott, 10 South West Street, Indianapolis, IN 46204. Members of the public may listen to the meeting by dialing toll free 1–877–918–2312 and entering participant code 6420867#. The meeting will also be webcast. Please refer to the FirstNet Authority's website at *www.firstnet.gov* for webcast instructions and other information.

FOR FURTHER INFORMATION CONTACT: Karen Miller-Kuwana, Board Secretary, FirstNet Authority, 12201 Sunrise Valley Drive, M/S 243, Reston, VA 20192; telephone: (571) 665–6177; email: *Karen.Miller-Kuwana@firstnet.gov.* Please direct media inquiries to Ryan Oremland at (571) 665–6186.

SUPPLEMENTARY INFORMATION: This notice informs the public that the FirstNet Authority Board and the Board Committees will convene an open public meeting on June 26, 2019.

Background: The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112–96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. 1401 *et seq.*)) (Act) established the FirstNet Authority as an independent authority within the National Telecommunications and Information Administration that is headed by a Board. The Act directs the FirstNet Authority to ensure the building, deployment, and operation of a nationwide, interoperable public safety broadband network. The FirstNet Authority Board is responsible for making strategic decisions regarding the FirstNet Authority's operations. The FirstNet Authority Board held its first public meeting on September 25, 2012.

Matters to be Considered: The FirstNet Authority will post a detailed agenda for the Combined Board Committees and Board Meeting on its website, *www.firstnet.gov,* prior to the meetings. The agenda topics are subject

to change. Please note that the subjects that will be discussed by the Committees and the Board may involve commercial or financial information that is privileged or confidential or other legal matters affecting the FirstNet Authority. As such, the Committee Chairs and Board Chair may call for a vote to close the meetings only for the time necessary to preserve the confidentiality of such information, pursuant to 47 U.S.C. 1424(e)(2).

Times and Dates of Meeting: A combined meeting of the FirstNet Authority Board and FirstNet Authority Board Committees will be held on June 26, 2019 between 10:00 a.m. and 12:30 p.m. (EDT). The meeting of the FirstNet Authority Board and the Governance and Personnel, Technology, Public Safety Advocacy, and Finance Committees will be open to the public from 10:00 a.m. to 12:30 p.m. (EDT). The times listed above are subject to change. Please refer to the FirstNet Authority's website at *www.firstnet.gov* for the most up-to-date information.

Place: The meetings on June 26, 2019 will be held at the JW Marriott, 10 South West Street, Indianapolis, IN 46204. Members of the public may listen to the meeting by dialing toll free 1–877–918–2312 and entering participant code 6420867#. The meeting will also be webcast. Please refer to the FirstNet Authority's website at *www.firstnet.gov* for webcast instructions and other information.

Other Information: These meetings are open to the public and press on a first-come, first-served basis. Space is limited. To ensure an accurate headcount, all expected attendees are asked to provide notice of intent to attend by sending an email to *BoardRSVP@firstnet.gov.* If the number of RSVPs indicates that expected attendance has reached its capacity, the FirstNet Authority will respond to all subsequent notices indicating that capacity has been reached and that in-person viewing may no longer be available but that the meeting may still be viewed by webcast as detailed below. For access to the meetings, valid government issued photo identification may be requested for security reasons.

The Combined Committee and Board Meetings are accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Ms. Miller-Kuwana by telephone at (571) 665–6177 or email at *Karen.Miller-Kuwana@firstnet.gov* at least five (5) business days before the applicable meeting.

The meeting will also be webcast. Please refer to the FirstNet Authority's website at *www.firstnet.gov* for webcast instructions and other information. Viewers experiencing any issues with the live webcast may email *support@sparkstreetdigital.com* or call 202–684–3361 x3 for support. A variety of automated troubleshooting tests are also available via the ''Troubleshooting Tips'' button on the webcast player. The meetings will also be available to interested parties by phone. To be connected to the meetings in listen-only mode by telephone, please dial toll free 1–877–918–2312 and enter participant code 6420867#. If you experience technical difficulty, please contact the Conferencing Center customer service at 1–866–900–1011.

Records: The FirstNet Authority maintains records of all Board proceedings. Minutes of the Board Meeting and the Committee meetings will be available at *www.firstnet.gov.*

Dated: June 10, 2019.

Karen Miller-Kuwana,

Board Secretary, First Responder Network Authority.

[FR Doc. 2019–12536 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–TL–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Connecticut; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301). On April 11, 2019, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See Application(s) for Duty-Free Entry of Scientific Instruments,* 84 FR 14654 (April 11, 2019) (*Notice*). We received no public comments. Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Ave. NW, Washington, DC

Docket Number: 18–010. Applicant: University of Connecticut, Storrs, CT 06269. Instrument: STED Confocal Microscope. Manufacturer: Abberior Instruments GmBH, Germany. Intended Use: See *Notice* at 14654. Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that were being manufactured in the United States at the time of order. Reasons: The instrument will be used to study a variety of biological material related to medical research. Scientists at the University of Connecticut will be able to reveal the protein nano-structure of: Mouse/rat brain tissue and cells, mouse colon tissue, fruit fly chromosomes, mouse spinal cord tissue, and mammalian or invertebrate cultured cells. The experiments to be conducted involve taking the material and examining it with various wavelengths of light to obtain fluorescent images of cellular structures with high levels of detail. The objectives pursued by research with this equipment are understanding of the normal and pathological mechanisms of cellular function relating to human health and disease. The techniques used by employing this equipment include using the method of stimulated emission depletion (STED), which enables the visualization of high resolution, microscopic structure of biological specimens.

Dated: June 10, 2019.

Gregory W. Campbell,

Director, Subsidies Enforcement, Enforcement and Compliance.

[FR Doc. 2019–12610 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Final Rescission, in Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, United States Department of Commerce.

SUMMARY: On October 4, 2018, the Department of Commerce (Commerce) initiated an administrative review of the antidumping duty order on hydrofluorocarbon blends (HFCs) from the People's Republic of China (China) for 13 companies. Based on timely withdrawal of requests for review, we are now rescinding this administrative review with respect to 12 of these companies.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Manuel Rey, AD/CVD Operations, Office II, Enforcement

and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4987 or (202) 482–5518, respectively.

Background

In August 2018, Commerce received timely requests to conduct an administrative review of the antidumping duty order on HFCs from China from Weitron International Refrigeration Equipment (Kushan) Co., Ltd. (Weitron) and the petitioners.[1] Based upon these requests, on October 4, 2018, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), Commerce published a notice of initiation of an administrative review covering the period of review (POR) August 1, 2017 through July 31, 2018, with respect to 13 companies.[2] On February 11, 2019, the petitioners withdrew their requests for an administrative review.[3] Weitron did not withdraw its request for an administrative review.

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.[4] Accordingly, the revised deadline for the issuance of these preliminary results is now June 12, 2019.

Partial Rescission

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The aforementioned withdrawal request by the petitioners was timely submitted, and no other interested party requested an administrative review of these particular companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this review of the antidumping duty order on HFCs from China, in part, with respect to the 12 companies named in the appendix.

The instant review will continue with respect to Weitron.

Preliminary Determination of No Shipments

We received timely submissions from Weitron certifying that it did not have sales, shipments, exports, or entries of subject merchandise to the United States during the POR.[5] On April 11, 2019, we requested U.S. Customs and Border Protection (CBP) data to confirm any entries of subject merchandise imported into the United States during the POR and exported by Weitron. This query returned no entries during the POR.[6] Additionally, in order to examine Weitron's claim, we sent an inquiry to CBP requesting that any CBP officer alert Commerce if he/she had information contrary to this no-shipments claim.[7] On April 12, 2019, we received notification from CBP of no information contrary to the no shipment claims.[8]

Because we have not received information to the contrary from CBP, consistent with our practice, we preliminarily determine that Weitron had no shipments of subject merchandise. In addition, as discussed below, we find it is not appropriate to rescind the review with respect to Weitron but, rather, to complete the review with respect to it and issue appropriate instructions to CBP based on the final results of the review, consistent with our practice in non-market economy (NME) cases.[9]

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice in the **Federal Register**.[10] Rebuttals to case briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the date for filing case briefs.[11] Parties who submit arguments are requested to submit with each argument (a) a statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[12] Parties submitting briefs should do so pursuant to Commerce's electronic filing system: Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[13] ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days of the date of publication of this notice. Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date of the hearing which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

Unless extended, we intend to issue the final results of this administrative review, including our analysis of all issues raised in any written brief, within 120 days of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse,

[1] The petitioners in this case are the American HFC Coalition and its individual members and District Lodge 154 of the International Association of Machinists and Aerospace Workers.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018). *See also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018), correcting the spelling of three company names.

[3] *See* Petitioner's Letter, ''Hydrofluorocarbon Blends from the People's Republic of China: Withdrawal of Review Request,'' dated February 11, 2019.

[4] *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.

[5] *See* letter from Weitron, ''No Shipment Certification and Separate Rate Application for Weitron: Antidumping Duty Administrative Review of Hydrofluorocarbon Blends from the People's Republic of China,'' dated November 7, 2018, at 1. Because Weitron certified that it did not have sales, shipments, exports, or entries of subject merchandise during the POR, and given that a suspended entry is required to evaluate a company's separate rate claim, we have not evaluated Weitron's separate rate application for the purposes of this review.

[6] *See* Memorandum, ''No shipments inquiry for hydrofluorocarbon blends from the People's Republic of China exported by Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (A–570–028),'' dated April 11, 2019.

[7] *Id.*

[8] *See* Memorandum, ''Re: No shipment inquiry with respect to the company below during the period 08/01/2017 through 7/31/2018,'' dated May 24, 2019.

[9] *See* the ''Assessment'' section, below.

[10] *See* 19 CFR 351.309(c)(1)(ii).

[11] *See* 19 CFR 351.309(d)(1)(2).

[12] *See* 19 CFR 351.309(c)(2), (d)(2).

[13] *See* 19 CFR 351.303 (for general filing requirements).

for consumption, in accordance with 19 CFR 351.212(c)(1)(i). For those companies, Commerce intends to issue assessment instructions to CBP 15 days after publication of this notice.

Pursuant to Commerce's practice in NME cases, if Commerce continues to determine in the final results that Weitron had no shipments of subject merchandise, any suspended entries during the POR from Weitron will be liquidated at the China-wide rate.[14] We intend to issue assessment instructions for Weitron 15 days after the publication date of the final results of this review.[15]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the China-wide rate of 216.37 percent (*i.e.,* including Weitron, which did not demonstrate that it was entitled to a separate rate in the most recently completed administrative review);[16] 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 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 preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751 and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: June 11, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

Companies for Which the Administrative Review Is Rescinded

Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd.
Daikin Fluorochemicals (China) Co., Ltd.
Dongyang Weihua Refrigerants Co., Ltd.
Jinhua Yonghe Fluorochemical Co., Ltd.
Shandong Huaan New Material Co., Ltd.
Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.
T.T. International Co., Ltd.
Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd.
Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.
Zhejiang Sanmei Chemical Industry Co., Ltd.
Zhejiang Yonghe Refrigerant Co., Ltd.
Zhejiang Zhonglan Refrigeration Technology Co., Ltd.

[FR Doc. 2019–12618 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–DS–P

[14] For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[15] *See* 19 CFR 351.212(b)(1).

[16] *See Hydrofluorocarbon Blends from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 17380, 17381 (April 25, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 19–00001]

Export Trade Certificate of Review

ACTION: Notice of application for an Export Trade Certificate of Review for National Pecan Shellers Association, Application no. 19–00001.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, has received an application for an Export Trade Certificate of Review (Certificate). This notice summarizes the proposed application and seeks public comments on whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Trade and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available

to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 19–00001.''

A summary of the application follows.

Summary of the Application

Applicant: National Pecan Shellers Association, 3200 Windy Hill Rd. SE, Suite 600W, Atlanta, GA 30339.

Contact: Russell A. Lemieux, Senior Vice President of Kellen, Telephone: (678) 303–3041.

Application No.: 19–00001.

Date Deemed Submitted: June 3, 2019.

Summary: National Pecan Shellers Association (''NPSA'') seeks a Certificate to engage in the export conduct described below.

Applicant/Certificate Holder

- NPSA

Proposed Members (''Members'')

- Arnco, Inc. dba Carter Pecan, Panama City Beach, Florida
- Chase Farms, LLC, Artesia, New Mexico
- Diamond Food, LLC, Stockton, California
- Green Valley Company, Sauharita, Arizona
- Hudson Pecan Co., Inc., Ocilla, Georgia
- Lamar Pecan Company, Hawkinsville, Georgia
- Navarro Pecan Company, Corsicana, Texas
- Pecan Grove Farms, Dallas, Texas
- San Saba Pecan, LP, San Saba, Texas
- South Georgia Pecan Company, Valdosta, Georgia

If the Certificate is issued, NPSA will establish a specially-funded Pecan Export Trade Council (''PETC''), which will operate under the umbrella of NPSA and in a committee-like fashion, although not an official committee of NPSA. PETC will be managed and administered by an independent third party, who will not disclose information obtained from PETC to another Member, non-Member, and/or NPSA. PETC will provide export trade facilitation services, including to the Members. PETC's charter members will be the Members above. PETC membership will be open to companies that are member and non-member companies of NPSA, and shall be limited to: (1) Exporting U.S. Shellers (*i.e.,* companies with a commercial pecan shelling plant); (2) Exporting U.S. pecan growers, and; (3) Exporting U.S. handlers of pecans. NPSA and PETC, once it is established, do not, and do not intend to, export Products.

Export Trade

Products: Pecan kernels and in-shell pecans, including raw and processed.

Services: All services related to the export of Products.

Technology Rights: All intellectual property rights associated with Products or Services, including, but not limited to: Patents, trademarks, services marks, trade names, copyrights, neighboring (related) rights, trade secrets, know-how, and confidential databases and computer programs.

Export Trade Facilitation Services (as They Relate to the Export of Products): Export Trade Facilitation Services, including but not limited to: Consulting and trade strategy, arranging and coordinating delivery of Products to the port of export; arranging for inland and/or ocean transportation; allocating Products to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, and freight forwarding; insurance and financing; documentation and services related to compliance with customs' requirements; sales and marketing; export brokerage; foreign marketing and analysis; foreign market development; overseas advertising and promotion; Products-related research and design based upon foreign buyer and consumer preferences; inspection and quality control; shipping and export management; export licensing; provisions of overseas sales and distribution facilities and overseas sales staff; legal; accounting and tax assistance; development and application of management information systems; trade show exhibitions; professional services in the area of government relations and assistance with federal and state export assistance programs (*e.g.,* Export Enhancement and Market Promotion programs, invoicing (billing) foreign buyers; collecting (letters of credit and other financial instruments) payment for Products; and arranging for payment of applicable commissions and fees.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operations

1. To engage in Export Trade in the Export Markets, NPSA, acting through PETC, or through export intermediaries (to the extent provided in section g, below), may:

a. Establish sales price, minimum sales price, target sales price and/or minimum target sales price, and other terms of sale;

b. Help Members collaborate in the marketing and distribution of Products;

c. Conduct joint promotion of Products;

d. Agree on quantities of Products to be sold, provided each member shall be required to dedicate only such quantity or quantities as each such Members shall independently determine;

e. Allocate geographic areas or countries in the Export Markets and/or customers in the Export Markets among Members;

f. Provide a forum whereby Members may agree to refuse to quote prices for Products, or to market or sell Products, to or for any customers in the Export Market, or any countries or geographical areas in the Export Markets;

g. Enter into exclusive and non-exclusive agreements appointing one or more export intermediaries (1) for the sale of Products with price, quantity, territorial and/or customer restrictions as provided in sections 1.a through 1.f, inclusive, above;

h. Purchase Products from companies that are not Members to fulfill specific sales obligations, provided that PETC and/or its Members shall make such purchases only on a transaction-by-transaction basis and when the Members are unable to supply, in a timely manner, the requisite, Products at a price competitive under the circumstances. In no event shall a company that is not a Member be included in any deliberations concerning any Export Trade Activities;

i. Negotiate favorable transportation rates (*e.g.,* volume discounts) and consolidate shipments;

2. PETC and its Members may exchange and discuss the following information:

a. Information about sales and marketing efforts for the Export Markets, activities and opportunities for sales of Products in the Export Markets, selling strategies for the Export Markets, sales for the Export Markets, contract and spot pricing in the Export Markets, projected demands in the Export Markets for Products, customary terms of sales in the Export Markets, prices and availability of Products from competitors for sale in the Export Markets, and specifications for Products by customers in the Export Markets;

b. Information about the price, quality, quantity, source and delivery

dates of Products available from the Members to export;

c. Information about terms and conditions of contracts for sale in the Export Markets to be considered and/or bid on by Members;

d. Information about joint bidding or selling arrangements for the Export Markets and allocations of sales resulting from such arrangements among the Members;

e. Information about expenses specific to exporting to and within the Export Markets, including without limitation, transportation, trans- or intermodal shipments, insurance, inland freights to port, port storage, commissions, export sales, documentation, financing, customers, duties and taxes;

f. Information about U.S. and foreign legislation and regulations, including federal marketing order programs, affecting sales for Export Markets;

g. Information about PETC's or Members' export operations, including without limitation, sales and distribution networks, established by PETC or the Members in the Export Markets, and prior export sales by Members (including export price information); and

h. Information about export customer credit terms and credit history.

3. Neither NPSA nor PETC will engage in export sales of pecans on behalf of any sheller, grower, or handler.

Dated: June 11, 2019.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2019–12569 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that High Den Enterprises Ltd. (High Den) is not eligible for a separate rate and is a part of the China-wide entity. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Allison Hollander or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2805 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 2004, Commerce published in the **Federal Register** an antidumping duty (AD) order on polyethylene retail carrier bags (PRCBs) from the People's Republic of China (China).[1] On August 7, 2018, Commerce published a notice of opportunity to request an administrative review of the AD order on PRCBs from China for the period of review (POR) August 1, 2017, through July 31, 2018.[2] Commerce received timely requests from the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation (the petitioners), to conduct an administrative review of certain exporters. On October 4, 2018, Commerce published in the **Federal Register** a notice initiating an administrative review of the AD order on PRCBs from China covering Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa); Crown Polyethylene Products (International) Ltd. (Crown) and High Den for the POR.[3]

We issued the AD questionnaire to the three respondents on October 18, 2018. On December 21, 2018, the petitioners timely withdrew their requests for review of Nozawa and Crown, pursuant to 19 CFR 351.213(d)(1).[4] We confirmed that the questionnaire to High Den was delivered and received on October 22, 2018.[5] High Den did not respond to the questionnaire and has filed no submissions on the record of this administrative review.

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.[6] The revised deadline for the preliminary results in this review is now June 12, 2019.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' The petitioners withdrew their request for review within the 90-day time limit with respect to Nozawa and Crown. Because we received no other requests for review of Nozawa and Crown, we are rescinding the administrative review, in part, with respect to Nozawa and Crown, pursuant to 19 CFR 351.213(d)(1).

Scope of the Order

The products subject to the AD order on PRCBs from China, are PRCBs, which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bag. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

China-Wide Entity

Under Commerce's current policy regarding the conditional review of the China-wide entity, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity.[7] Because no party requested a

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[1] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China,* 69 FR 48201 (August 9, 2004).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 83 FR 38682 (August 7, 2018).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

[4] *See* the petitioners' Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated December 21, 2018.

[5] *See* Memorandum, ''High Den Enterprises, Ltd., Receipt of Questionnaire,'' dated December 13, 2018.

[6] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day.

[7] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent*

review of the China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 77.57 percent).[8] Because High Den did not respond to the questionnaire, Commerce preliminarily determines that High Den is not eligible for a separate rate and is a part of the China-wide entity.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.*

Preliminary Results of Review

Because High Den is not eligible for a separate rate and is a part of the China-wide entity, the pre-existing China-wide rate of 77.57 percent will apply to entries of High Den's subject merchandise into the United states during the POR.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with a preliminary results of review within five days after public announcement of the preliminary results of review in accordance with 19 CFR 351.224(b). Because Commerce preliminarily denied the separate rate eligibility for the sole mandatory respondent in this review and treated it as part of the China-wide entity, there are no calculations to disclose.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[9] Parties who submit case briefs or rebuttal briefs in this proceeding 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.[10] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[11]

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.[12] Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless extended, Commerce intends to issue the final results of this review, including the results of its analysis of issues raised by parties in their comments, within 120 days after the publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Assessment Rates

Upon issuing the final results of review, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[13] If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate of 77.57 percent to all entries of subject merchandise during the POR which were exported by High Den. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters of subject merchandise 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 published for the most recently completed period; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, *i.e.,* High Den, the cash deposit rate will be the China-wide rate of 77.57 percent; 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 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 preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results and partial rescission of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: June 6, 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. Rescission of Administrative Review in Part
V. Discussion of the Methodology
  A. Non-Market Economy Country Status
  B. Separate Rates
VI. Recommendation

[FR Doc. 2019–12607 Filed 6–13–19; 8:45 am]

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Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings, 78 FR 65963 (November 4, 2013).

[8] *See Notice of Amended Final Determination of Sales at Less than Fair Value: Polyethylene Retail Carrier Bags From the People's Republic of China,* 69 FR 42419 (July 15, 2004).

[9] *See* 19 CFR 351.309(c)(2).

[10] *See* 19 CFR 351.309(c)(2).

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.212(b)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Certain Activated Carbon From the People's Republic of China: Preliminary Results of 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 Carbon Activated Tianjin Co., Ltd. (Carbon Activated) and Datong Juqiang Activated Carbon Co., Ltd. (Datong Juqiang), exporters of certain activated carbon from the People's Republic of China (China), sold subject merchandise in the United States at less than fair value during the period of review (POR) April 1, 2017 through March 31, 2018. Interested parties are invited to comment on these preliminary results.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: John Anwesen or Jinny Ahn, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0131 or (202) 482–0339, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain activated carbon. The products are currently classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order remains dispositive.[1]

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this administrative review on June 6, 2018.[2] On December 7, 2018, Commerce extended the preliminary results deadline until April 30, 2019.[3] 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.[4] 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 preliminary results deadline is now June 10, 2019.

Preliminary Determination of No Shipments

Based on our analysis of U.S. Customs and Border Protection (CBP) information, and the no shipment certifications submitted by Charter Link Logistics Limited, Datong Municipal Yunguang Activated Carbon Co., Ltd., Jilin Bright Future Chemicals Co., Ltd., Shanxi Dapu International Trade Co., Ltd., Shanxi Industry Technology Trading Co., Ltd., Shanxi Tianxi Purification Filter Co., Ltd., and Tianjin Channel Filters Co., Ltd., Commerce preliminarily determines that these companies had no shipments of subject merchandise during the POR. For additional information regarding this determination, *see* the Preliminary Decision Memorandum.

Consistent with our practice in non-market economy (NME) cases, we are not rescinding this review but instead intend to complete the review with respect to these seven companies, for which we have preliminarily found no shipments, and issue appropriate instructions to CBP based on the final results of the review.[5]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices and constructed export prices in accordance with section 772 of the Act. Because China is an NME country within the meaning of section 771(18) of the Act, normal value (NV) has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

Commerce preliminarily finds that 239 companies for which a review was requested[6] did not establish eligibility for a separate rate because they failed to provide either a separate rate application or separate rate certification. As such, we preliminarily determine that these 239 companies are part of the China-wide entity.[7]

For those companies that have established their eligibility for a separate rate,[8] Commerce preliminarily determines that the following weighted-average dumping margins exist for the POR:

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[1] For a complete description of the Scope of the Order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Activated Carbon from the People's Republic of China; 2017–2018,'' dated June 10, 2019 (Preliminary Decision Memorandum) and hereby adopted by this notice.

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 26258 (June 6, 2018) (*Initiation Notice*).

[3] *See* Memorandum, ''Certain Activated Carbon from the People's Republic of China: Extension of Deadline for Preliminary Results of the Eleventh Antidumping Duty Administrative Review,'' dated December 7, 2018.

[4] *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.

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011).

[6] *See Initiation Notice* at 26260.

[7] Because no interested party requested a review of the China-wide entity and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity. Thus, the rate for the China-wide entity is not subject to change as a result of this review. *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013). The China-wide entity rate of 2.42 U.S. dollars per kilogram was last reviewed in *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 70163 (November 25, 2014).

[8] *See* Preliminary Decision Memorandum.

Exporter	Weighted-average dumping margin (U.S. dollars per kilogram) [9]
Beijing Pacific Activated Carbon Products Co., Ltd	3.90
Carbon Activated Tianjin Co., Ltd	1.65
Datong Juqiang Activated Carbon Co., Ltd	4.33
Jacobi Carbons AB [10]	3.90
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	3.90
Ningxia Huahui Activated Carbon Co., Ltd	3.90
Ningxia Mineral & Chemical Limited	3.90
Shanxi Sincere Industrial Co., Ltd	3.90

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results to the parties no later than ten days after the date of the public announcement of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c)(ii), interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Parties who submit case briefs or rebuttal briefs in this proceeding 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. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[11]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[12] 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 date and time to be determined.[13] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*e.g.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[14] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose (estimated) *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[15] Commerce will also calculate (estimated) [16] *ad valorem* importer-specific assessment rates with which to assess whether the per-unit assessment rate is *de minimis.*[17] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* 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,*[18] 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

[9] In the second administrative review of the *Order,* Commerce determined that it would calculate per-unit weighted-average dumping margins and assessment rates for all future reviews. *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70211 (November 17, 2010); *see also Notice of Antidumping Duty Order: Certain Activated Carbon from the People's Republic of China,* 72 FR 20988 (April 27, 2007) (*Order*).

[10] In the third administrative review of the *Order,* Commerce found that Jacobi Carbons AB, Tianjin Jacobi International Trading Co. Ltd., and Jacobi Carbons Industry (Tianjin) should be treated as a single entity, and because there were no facts presented on the record of this review which would call into question our prior finding, we continue to treat these companies as part of a single entity for this administrative review, pursuant to sections 771(33)(E), (F), and (G) of the Act and 19 CFR 351.401(f). *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review,* 76 FR 67142, 67145, n.25 (October 31, 2011); *see also* Preliminary Decision Memorandum.

[11] *See* 19 CFR 351.309(d).

[12] *See* 19 CFR 351.310(c).

[13] *See* 19 CFR 351.310(d).

[14] *See* 19 CFR 351.212(b)(1).

[15] In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[16] *See Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208 (November 17, 2010), and accompanying IDM at Comment 3. (In the second administrative review of this proceeding, we analyzed the difference between reported entered values and estimated customs values. In that segment, we found substantial differences between the estimated customs values for entries of certain activated carbon and the entered values reported to CBP. We determined that the entered values of constructed export price sales were being systematically understated, which we also determined would result in the under-collection of antidumping duties by CBP. Accordingly, we made a determination to switch to per-unit assessment and cash deposit rates in that and subsequent reviews.)

[17] For calculated (estimated) *ad valorem* importer-specific assessment rates used in determining whether the per-unit assessment rate is *de minimis, see* Memorandum, ''Preliminary Results Margin Calculation for Datong Juqiang Activated Carbon Co., Ltd.'' and Memorandum, ''Antidumping Duty Administrative Review of Certain Activated Carbon the People's Republic of China: Preliminary Results Calculation Memorandum for Carbon Activated,'' both dated June 10, 2019, and attached Margin Calculation Program Logs and Outputs.

[18] *See* 19 CFR 351.106(c)(2).

this administrative review but qualified for a separate rate, the assessment rate will be the weighted-average rate based on publicly available ranged U.S. sales quantities of the mandatory respondents consistent with section 735(c)(5)(A) of the Act. Consequently, the rate established for the non-individually examined companies is a *per-unit* rate of $3.90 per kilogram.

For the final results, if we continue to treat the 239 companies, identified at the Attachment to the Preliminary Decision Memorandum, as part of the China-wide entity, we will instruct CBP to apply a per-unit assessment rate of $2.42 per kilogram to all entries of subject merchandise during the POR which were produced and/or exported by those companies.

For entries that were not reported in the U.S. sales data submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.[19] Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity.[20]

In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For each specific company listed in the final results of this review, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have received a separate rate in the completed segment of this proceeding for the most recent period, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(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.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: June 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
  a. Preliminary Finding of No Shipments
  b. Non-Market Economy Country
  c. Separate Rates
  d. Dumping Margin for Non-Examined Separate-Rate Companies
  e. Surrogate Country and Surrogate Value Data
  f. Partial Facts Available
  g. Date of Sale
  h. Comparisons to Normal Value
  i. U.S. Price
  j. Normal Value
  k. Currency Conversion
V. Recommendation

[FR Doc. 2019–12616 Filed 6–13–19; 8:45 am]

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[19] *Id.*

[20] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–878, C–580–879]

Certain Corrosion-Resistant Steel Products From the Republic of Korea: Opening of Scope Segment and Opportunity to Comment

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) received information from U.S. Customs and Border Protection (CBP) relating to the antidumping duty (AD) and countervailing duty (CVD) orders on certain corrosion resistant steel products from the Republic of Korea (Korea). Commerce is providing notice that it is opening a scope segment in the proceeding in order to place this information on the record of the case and provide an opportunity for interested parties to comment.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Thomas Dunne at (202) 482–2328, AD/CVD Operations, Office VII, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

Commerce received information from CBP regarding entries into the United States of certain products that closely resemble merchandise subject to these orders.[1] Specifically, this merchandise has content that exceeds, by weight, 2.50% manganese. Commerce has opened a segment entitled ''Manganese Content,'' in order to place this information on the record.

Scope of the Orders

For a full description of the scope of this order, *see* Attachment.

Notification to Interested Parties

Commerce is hereby notifying interested parties that it has received the information discussed above and intends to provide interested parties with the opportunity to submit comments and if appropriate, new factual information. Parties are invited to submit factual information and/or comment on these materials no later

[1] *See* Memorandum, ''Scope Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from South Korea (A–580–878 and C–580–879): Release of U.S. Customs and Border Protection Entry Packages,'' dated concurrently with this notice.

than fourteen days after the publication of this notice.

Parties are also hereby notified that this is the only notice that Commerce intends to publish in the **Federal Register** concerning this request for comments. Therefore, interested parties that wish to submit factual information and/or comments must submit their letters of appearance as discussed below. Further, any party desiring access to business proprietary information (BPI) must file an application on the proceeding segment for access to BPI under Administrative Protective Order (APO), as discussed below.

Filing Requirements

All submissions to Commerce must be filed electronically via Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[2] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date of receipt by the applicable deadlines.

Letters of Appearance and Administrative Protective Order

Interested parties that wish to participate in this segment of the proceeding and be added to the public service list must file a letter of appearance in accordance with 19 CFR 351.103(d)(1) on the record of this segment. Commerce placed an APO on the record of this segment on May 2, 2019.[3] Commerce intends to place the business proprietary versions of the documents on the record of this proceeding in ACCESS within five days of publication of this notice.

Interested parties must submit applications for disclosure under the APO in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to the segment addressed in this notice.

Dated: June 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Attachment

Scope of the Order

The products covered by this order are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.,* in successively superimposed layers, spirally oscillating, *etc.*). The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.,* in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been ''worked after rolling'' (*e.g.,* products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above, and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this order are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (''IF'')) steels and high strength low alloy (''HSLA'') steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (''AHSS'') and Ultra High Strength Steels (''UHSS''), both of which are considered high tensile strength and high elongation steels.

Subject merchandise also includes corrosion-resistant steel that has been further processed in a third country, including but not limited to annealing, tempering painting, varnishing, trimming, cutting, punching and/or slitting or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope corrosion resistant steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this order unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this order:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin free steel''), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;
- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and
- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%–60%–20% ratio.

The products subject to the order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the order may also enter under the following HTSUS item

[2] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011), as amended in *Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[3] *See* the Administrative Protective Order ''In the Matter of the Scope Inquiry of the Antidumping Duty Order on Corrosion-Resistant Steel Products from South Korea (A–580–878 and C–580–879)'' (Manganese Content), dated May 2, 2019.

numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.[4]

[FR Doc. 2019–12609 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that producers or exporters of welded line pipe from the Republic of Korea sold welded line pipe at less than normal value during the period of review (POR), December 1, 2016, through November 30, 2017.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Joshua Tucker, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–0244, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers 32 producers or exporters. Commerce selected two companies, NEXTEEL Co., Ltd. (NEXTEEL) and SeAH Steel Corporation (SeAH), for individual examination. The producers or exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On February 14, 2019, Commerce published the *Preliminary Results.*[1]

On April 4, 2019, we received case briefs from NEXTEEL, SeAH, Husteel Co., Ltd., Hyundai Steel Company, and Maverick Tube Corporation (Maverick).[2] On April 12, 2019, we received rebuttal briefs from SeAH, Maverick, and domestic producers California Steel Industries, TMK IPSCO, and Welspun Tubular LLC USA (collectively, ''Domestic Interested Parties).[3]

Scope of the Order

The merchandise subject to the order is welded line pipe.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the Appendix to this notice and addressed in the IDM.[5] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, 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 ACCESS is also available to all interested parties in the Central Records Unit, Room B8024, of the main Department of Commerce building. In addition, a complete version of the IDM can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed IDM and the electronic version of the IDM are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margins for NEXTEEL and SeAH.[6]

Duty Absorption

In the *Preliminary Results,* we preliminarily found that antidumping duties were absorbed on all U.S. sales of subject merchandise that were exported by SeAH.[7] However, because NEXTEEL did not sell merchandise to the United States through an affiliated importer, within the meaning of section 751(a)(4) of the Act, we did not make a preliminary duty absorption finding for NEXTEEL.[8]

We have received no further information regarding this issue for the final results. Therefore, for the final results, we continue to find that antidumping duties have been absorbed on all U.S. sales of subject merchandise that were exported by SeAH.

Determination of No Shipments

As noted in the *Preliminary Results,* we received a no shipment claim from HiSteel Co., Ltd. (HiSteel) and preliminarily determined that HiSteel had no shipments during the POR.[9] We received no comments from interested parties with respect to this claim. Therefore, because the record indicates that HiSteel had no entries of subject merchandise to the United States during the POR, we continue to find that HiSteel had no shipments during the POR.

Final Results of the Review

We are assigning the following weighted-average dumping margins to the firms listed below for the period December 1, 2016, through November 30, 2017:

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[4] *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).

[1] *See Welded Line Pipe from Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017,* 84 FR 4046 (February 14, 2019) (*Preliminary Results*).

[2] *See* NEXTEEL's Case Brief, ''Welded Line Pipe from the Republic of Korea: NEXTEEL's Case Brief,'' dated April 4, 2019; SeAH's Case Brief, ''Case Brief of SeAH Steel Corporation,'' dated April 4, 2019; Husteel's Case Brief, ''Welded Line Pipe from the Republic of Korea, 12/1/2016–11/30/2017 Administrative Review, Case No. A–580–876; Case Brief,'' dated April 4, 2019; Hyundai Steel's Case Brief, ''Welded Line Pipe from the Republic of Korea: Case Brief,'' dated April 4, 2019; and Maverick's Case Brief, ''Welded Line Pipe from the Republic of Korea: Case Brief of Maverick Tube Corporation,'' dated April 4, 2019.

[3] *See* SeAH's Rebuttal Brief, ''Rebuttal Brief of SeAH Steel Corporation,'' dated April 12, 2019; Maverick's Rebuttal Brief, ''Welded Line Pipe from Korea: Rebuttal Brief of Maverick Tube Corporation,'' dated April 12, 2019 (Maverick Rebuttal Brief); and Domestic Interested Parties Rebuttal Brief, ''Welded Line Pipe from the Republic of Korea: Rebuttal Brief,'' dated April 12, 2019.

[4] For a complete description of the scope of the order, *see Preliminary Results* and accompanying Preliminary Decision Memorandum (PDM).

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea'' (IDM), dated concurrently with, and hereby adopted by, this notice.

[6] *See* IDM at 3.

[7] *See* PDM at 26–27.

[8] *Id.*

[9] *See Preliminary Results,* 84 FR at 4047.

Producer or exporter	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	38.87
SeAH Steel Corporation	27.38

Review-Specific Average Rate Applicable to the Following Companies: [10]

Exporter or producer	Weighted-average dumping margin (percent)
AJU Besteel Co., Ltd	32.49
BDP International, Inc	32.49
Daewoo International Corporation	32.49
Dongbu Incheon Steel Co	32.49
Dongbu Steel Co., Ltd	32.49
Dongkuk Steel Mill	32.49
Dong Yang Steel Pipe	32.49
EEW Korea Co., Ltd	32.49
Husteel Co., Ltd	32.49
Hyundai RB Co. Ltd	32.49
Hyundai Steel Company/Hyundai HYSCO	32.49
Kelly Pipe Co., LLC	32.49
Keonwoo Metals Co., Ltd	32.49
Kolon Global Corp	32.49
Korea Cast Iron Pipe Ind. Co., Ltd	32.49
Kurvers Piping Italy S.R.L	32.49
MSTEEL Co., Ltd	32.49
Miju Steel MFG Co., Ltd	32.49
Poongsan Valinox (Valtimet Division)	32.49
POSCO	32.49
POSCO Daewoo	32.49
R&R Trading Co. Ltd	32.49
Sam Kang M&T Co., Ltd	32.49
Sin Sung Metal Co., Ltd	32.49
SK Networks	32.49
Soon-Hong Trading Company	32.49
Steel Flower Co., Ltd	32.49
TGS Pipe	32.49
Tokyo Engineering Korea Ltd	32.49

Disclosure of Calculations

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), NEXTEEL reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. SeAH did not report actual entered value for all of its U.S. sales such that we calculated entered value and determined the importer-specific *ad valorem* assessment rates as described above for NEXTEEL. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate equal to each company's weighted-average dumping margin identified above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[11]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective 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 each specific company listed above will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not listed above, including the company for Commerce has determined had no shipments in these final results, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[12] 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 review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only 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), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of 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.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[10] This rate is based on the weighted-average of the margins calculated for those companies selected for individual review using the publicly-ranged U.S. quantities. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Review-Specific Average Rate for the Preliminary Results,'' dated concurrently with this notice.

[11] *See* section 751(a)(2)(C) of the Act.

[12] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015).

Dated: June 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the IDM

I. Summary
II. Background
III. Margin Calculations
IV. Discussion of the Issues
General Issues:
Comment 1: Lawfulness of Commerce's Interpretation of the Particular Market Situation (PMS) Provision
Comment 2: Evidence of a PMS
Comment 3: PMS Adjustment
Comment 4: Source for Constructed Value (CV) Selling Expenses and Profit
NEXTEEL-Specific Issues:
Comment 5: NEXTEEL's Affiliation With POSCO
Comment 6: Importer-Specific Assessment Rate for NEXTEEL/POSCO
Comment 7: Major Input Analysis for NEXTEEL
Comment 8: Non-Prime Costs for NEXTEEL
Comment 9: Suspended Production Loss for NEXTEEL
SeAH-Specific Issues:
Comment 10: Canada as Comparison Market for SeAH
Comment 11: Capping of Freight Revenue for SeAH
Comment 12: Application of Quarterly Costs to SeAH
Comment 13: Adjustment for General and Administrative (G&A) Expenses for SeAH's U.S. Affiliates
V. Recommendation

[FR Doc. 2019–12605 Filed 6–13–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–887, A–583–865, A–570–104]

Carbon and Alloy Steel Threaded Rod From India, Taiwan, and the People's Republic of China: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Annathea Cook at (202) 482–0250 (India); Nicholas Czajkowski at (202) 482–1395 (Taiwan); Joshua Poole at (202) 482–1293 (the People's Republic of China (China)); AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2019, the Department of Commerce (Commerce) initiated less-than-fair-value (LTFV) investigations of imports of carbon and alloy steel threaded rod from India, Taiwan, Thailand, and China.[1] The preliminary determinations are currently due no later than July 31, 2019.

Postponement of Preliminary Determinations

Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), requires Commerce to issue the preliminary determination in an LTFV investigation within 140 days after the date on which Commerce initiated the investigation. However, section 733(c)(1) of the Act permits Commerce to postpone the preliminary determination until no later than 190 days after the date on which Commerce initiated the investigation if: (A) The petitioner makes a timely request for a postponement; or (B) Commerce concludes that the parties concerned are cooperating and determines that (i) the investigation is extraordinarily complicated, and that (ii) additional time is necessary to make a preliminary determination. Under 19 CFR 351.205(e), the petitioner must submit a request for postponement 25 days or more before the scheduled date of the preliminary determination and must state the reasons for the request. Commerce will grant the request unless it finds compelling reasons to deny the request.

On March 29, 2019, the petitioner[2] submitted timely requests that Commerce postpone the preliminary determinations in these LTFV investigations.[3] The petitioner stated that it requests postponement to allow Commerce time to issue and review questionnaire responses and to identify any deficiencies in those responses.[4] On May 10, 2019, the petitioner withdrew its request to postpone the preliminary determination for the Thailand investigation.[5] On May 15, 2019, the petitioner withdrew its request to postpone the preliminary determination for the Taiwan investigation.[6] On May 23, 2019, the petitioner renewed its request postpone the preliminary determination for the Taiwan investigation.[7] Thus, petitioner has submitted timely requests that Commerce postpone the preliminary determinations in the India, Taiwan, and China LTFV investigations.

In accordance with 19 CFR 351.205(e), the petitioner has stated the reasons for requesting the postponement of the preliminary determinations, and Commerce finds no compelling reason to deny the requests. Therefore, Commerce is postponing the deadline for the preliminary determinations by 50 days, in accordance with section 733(c)(1)(A) of the Act. As a result, Commerce will issue its preliminary determinations no later than September 19, 2019. In accordance with section 735(a)(1) of the Act and 19 CFR 351.210(b)(1), the deadline for the final determinations of these investigations will continue to be 75 days after the date of the preliminary determinations, unless postponed at a later date.

This notice is issued and published in accordance with section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: June 10, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–12604 Filed 6–13–19; 8:45 am]

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[1] *See Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 84 FR 10034 (March 19, 2019).

[2] The petitioner is Vulcan Threaded Products Inc.

[3] *See* Letters from the petitioner, ''Carbon and Alloy Steel Threaded Rod from India: Request to Extend Preliminary Determination Deadline'', dated March 29, 2019, and ''Carbon and Alloy Steel Threaded Rod from Taiwan: Request to Extend Preliminary Determination Deadline'', dated March 29, 2019, and ''Carbon and Alloy Steel Threaded Rod from Thailand: Request to Extend Preliminary Determination Deadline'', dated March 29, 2019, and ''Carbon and Alloy Steel Threaded Rod from China: Request to Extend Preliminary Determination Deadline'', dated March 29, 2019.

[4] *Id.*

[5] *See* Letter from the petitioner, ''Carbon and Alloy Steel Threaded Rod from Thailand: Withdrawal of Request to Extend Preliminary Determination Deadline'', dated May 10, 2019.

[6] *See* Letter from the petitioner, ''Carbon and Alloy Steel Threaded Rod from Taiwan: Withdrawal of Request to Extend Preliminary Determination Deadline'', dated May 15, 2019.

[7] *See* Letter from the petitioner, ''Carbon and Alloy Steel Threaded Rod from Taiwan: Renewed Request to Extend Preliminary Determination Deadline'', dated May 23, 2019.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–010]

Certain Crystalline Silicon Photovoltaic Products 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: On March 6, 2019, the Department of Commerce (Commerce)

published its *Preliminary Results* for the February 1, 2017, through January 31, 2018, administrative review of the antidumping duty order on Certain Crystalline Silicon Photovoltaic Products (solar products) from the People's Republic of China (China). Although invited to do so, interested parties did not comment on our *Preliminary Results.* We have adopted the *Preliminary Results* as the final results.

DATES: Applicable June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

Background

On March 6, 2019, Commerce published its *Preliminary Results* of the review of the antidumping duty order on solar products from China for Sol-lite Manufacturing Company Limited (Sol-lite), Ri Shen Products (SZ) (Ri Shen), and Shenzhen Sungold Solar Co., Ltd. (Sungold) covering the period February 1, 2017, through January 31, 2018 (the period of review (POR)).[1] No parties commented on the *Preliminary Results.*

Scope of the Order

The product covered by the *Order* is certain crystalline silicon photovoltaic products. Commerce preliminarily revised the scope to include the harmonized tariff schedule numbers under which subject merchandise is entered.[2] No parties commented on this revision. Hence, we have adopted this revision in these final results. Under this revision, imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 8501.61.0000, 8507.20.8030, 8507.20.8040, 8507.20.8060, 8507.20.8090, 8541.40.60.15, 8541.40.6020, 8541.40.6030, 8541.40.60.35. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[3]

Analysis

As noted above, no parties commented on the *Preliminary Results.* Therefore, we are adopting the decisions in the Preliminary Decision Memorandum for these final results of review. In the *Preliminary Results,* Commerce: (1) Determined that all three companies under review—Sol-lite, Ri Shen, and Sungold—did not establish their eligibility for a separate rate and are part of the China-wide entity.[4] For these final results of review, we have continued to treat Sol-lite, Ri Shen, and Sungold as part of the China-wide entity. Because no party requested a review of the China-wide entity, we are not conducting a review of the China-wide entity.[5] Thus, there is no change to the rate for the China-wide entity. The existing rate for the China-wide entity is 151.98 percent.

For additional details, *see* the Preliminary Decision Memorandum, which is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Results Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Assessment Rates

Pursuant to section 751(a)(2)(C) Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. Commerce intends to instruct CBP to liquidate any entries of subject merchandise exported during this POR by Sol-lite, Ri Shen, and Sungold at the China-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of this review, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed China and non-China exporters which are not under review in this segment of the proceeding but which received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) 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 151.98 percent; and (3) for all non-China exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-China exporter.

These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

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 review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation that is subject to sanction.

This notice of the final results of this antidumping duty administrative review is issued and published in accordance

[1] *See Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 8081 (March 6, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Preliminary Results,* 84 FR at 8081 and the PDM at 3, n.15 (discussing the revisions to the HTSUS numbers in the scope).

[3] *See* PDM for a complete description of the scope of the *Order.*

[4] *See Preliminary Results,* 84 FR 8081.

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(5).

Dated: June 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–12608 Filed 6–13–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Baldrige Performance Excellence Program (BPEP)/National Institute of Standards and Technology (NIST).

Title: Malcolm Baldrige National Quality Award (MBNQA) Application.

OMB Control Number: 0693–0006.

Form Number(s): None.

Type of Request: Revision and extension of a current information collection.

Number of Respondents: ~30 organizations apply for the MBNQA; ~550 individuals apply for a spot on the MBNQA Board of Examiners, the assessors who review the applications for the MBNQA.

Average Hours per Response: 30 minutes for organizational applications for MBNQA, and 30 minutes for applications for the Board of Examiners.

Burden Hours: MBNQA = 15 hours, Board of Examiners = 275 hours.

Needs and Uses: Collection needed to obtain information to conduct the MBNQA (Pub. L. 100–107, Malcolm Baldrige National Quality Improvement Act of 1987).

Affected Public: Business, health care, education, or other for-profit organizations; health care, education, and other nonprofit organizations; and individuals or households.

Frequency: Annual.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–12554 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Generic Clearance for Community Resilience Data Collections.

OMB Control Number: #0693–0078.

Form Number(s): None.

Type of Request: Regular submission (revision and extension of a currently approved information collection.)

Number of Respondents: 20,000.

Average Hours per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an interview. The overall average response time is expected to be 30 minutes.

Burden Hours: 15,000.

Needs and Uses: NIST proposes to conduct a number of data collection efforts within the topic areas of disaster and failure studies and community resilience and sustainability, including studies of specific disaster events (*e.g.,* wildfire, urban fire, structure collapse, hurricane, earthquake, tornado, and flood events), assessments of community resilience and sustainability, and evaluations of the usability and utility of NIST guidance or other products. The results of the data collected will be used to decrease negative impacts of disasters on society, and, in turn, increase community resilience with the U.S. communities. NIST will limit its inquires to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to assure anonymity covered under this request.

Affected Public: Individuals or households; business or other for-profit organizations, not-for-profit institutions, State, Local or Tribal Government; Federal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–12567 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Bering Sea and Aleutian Islands Crab Economic Data Reports (EDR).

OMB Control Number: 0648–0518.

Form Number(s): None.

Type of Request: Regular (revision and extension of a previously approved collection).

Number of Respondents: 95.

Average Hours per Response: 20 hours each for full Catcher Vessel Crab EDR and full Catcher/Processor Crab EDR; 16 hours for full Processor Crab EDR; 1 hour each for certification-only Catcher Vessel Crab EDR, certification-only Catcher/Processor Crab EDR, and certification-only Processor Crab EDR; and 8 hours for Verification of Data.

Burden Hours: 1,893 hours.

Needs and Uses: This is an extension of a currently approved collection of information that covers the economic data collection components, known as ''Economic Data Reports,'' for the Bering Sea and Aleutian Island (BSAI) Crab Rationalization Program (CR Program). The CR Program is a catch share program that allocates BSAI crab resources among harvesters, processors, and coastal communities.

This information collection contains three forms: (1) Annual Catcher/Processor Crab EDR; (2) Annual Catcher Vessel Crab EDR; and (3) Annual Processor Crab EDR. This information collection also contains a data verification audit, to ensure that data submitted by respondents in the EDRs are accurate. Any owner or leaseholder of a vessel or processing plant, or a holder of a Registered Crab Receiver permit who harvested, processed, custom processed, or obtained custom processing for CR crab during a calendar year, must submit a completed EDR annually.

The EDRs provide the data necessary to analyze the economic effects of the CR Program and the economic performance of participants in the program, and to estimate impacts of future issues, problems, or proposed revisions to the program. The data collected through the EDRs are used to prepare reports, program reviews, and analysis of proposed revisions to the CR Program regulations.

Affected Public: Business or other for-profit organizations; Not-for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–12555 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals and Endangered Species

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

ACTION: Notice; issuance of permits and permit amendments, or modifications.

SUMMARY: Notice is hereby given that permits or permit amendments have been issued to the following entities under the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA), as applicable.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone: (301) 427–8401; fax: (301) 713–0376.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore (Permit Nos. 22387 and 22311), Erin Markin (Permit No. 20315–01), Courtney Smith (Permit No. 20648), Shasta McClenahan (Permit No. 21938), Carrie Hubard (Permit No. 22479), and Sara Young (Permit No. 19108–04); at (301) 427–8401.

SUPPLEMENTARY INFORMATION: Notices were published in the **Federal Register** on the dates listed below that requests for a permit or permit amendment had been submitted by the below-named applicants. To locate the **Federal Register** notice that announced our receipt of the application and a complete description of the research, go to *www.federalregister.gov* and search on the permit number provided in the table below.

Permit No.	RIN	Applicant	Previous **Federal Register** notice	Permit or amendment issuance date
19108–04	0648–D953	Daniel P. Costa, Ph.D., University of California at Santa Cruz, Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, CA 95064.	84 FR 13638; April 5, 2019.	May 9, 2019.
20315–01	0648–XF215	Kristen Hart, Ph.D., U.S. Geological Survey, 3205 College Avenue, Davie, FL 33314.	84 FR 2172; February 6, 2019.	May 13, 2019.
20648	0648–XG360	Heidi Pearson, Ph.D., University of Alaska Southeast, 11066 Auke Lake Way, AND1, Juneau, AK 99801.	83 FR 49548; October 2, 2018.	May 20, 2019.
21938	0648–XG344	NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (Responsible Party: Theophilus Brainerd, Ph.D.).	83 FR 40755; August 16, 2018.	May 21, 2019.
22311	0648–XG875	David Johnston, Ph.D., Duke University, Marine Science and Conservation, 135 Duke Marine Lab Road, Beaufort, NC 28516.	84 FR 10045; March 19, 2019.	May 14, 2019.
22387	0648–XG878	Benjamin Hubert, Ph.D., New York Genome Center, 101 Avenue of the Americas, New York City, NY 10013.	84 FR 9761; March 18, 2019.	May 2, 2019.
22479	0648–XG906	Jose Pablo Vazquez-Medina, Ph.D., University of California Berkley, Department of Integrative Biology, 3040 Valley Life Sciences Building, No. 3140, Berkley, CA 94720.	84 FR 13006; April 3, 2019.	May 20, 2019.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, as applicable, issuance of these permit was based on a finding that such permits: (1) Were applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) are consistent with the purposes and policies set forth in Section 2 of the ESA.

Authority: The requested permits have been issued under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), as applicable.

Dated: June 10, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–12538 Filed 6–13–19; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* July 14, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/10/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.

2. The action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN—Product Name: MR 13033—Placemat, Woven, Assorted Colors
Mandatory Source of Supply: Chester County Branch of the PAB, Coatesville, PA

NSN—Product Name: MR 1048—Bottle, Trigger, All Purpose, Opaque, 32 oz
Mandatory Source of Supply: Alphapointe, Kansas City, MO
Contracting Activity: Military Resale-Defense Commissary Agency

Deletions

On 5/10/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the services deleted from the Procurement List.

End of Certification

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type: Contract Cook Support & Dining Facility Attendant
Mandatory for: White Sands Missile Range, NM
Mandatory Source of Supply: Tresco, Inc., Las Cruces, NM
Contracting Activity: DEPT OF THE ARMY, W6QM MICC—WHITE SANDS

Service Type: Janitorial Services
Mandatory for: Norman Armed Force Reserve Center (AFRC), Norman, OK, Mustang Armed Force Reserve Center (AFRC), Mustang, OK
Mandatory Source of Supply: Dale Rogers Training Center, Inc., Oklahoma City, OK
Contracting Activity: DEPT OF THE ARMY, W7NV USPFO ACTIVITY OK ARNG

Service Type: Food Service Attendant
Mandatory for: Fort Custer Training Center, Augusta, MI
Mandatory Source of Supply: Calhoun County Community Mental Health Services, Battle Creek, MI
Contracting Activity: DEPT OF THE ARMY, W7NF USPFO ACTIVITY MI ARNG

Service Type: Packaging Service
Mandatory for: Crane Division, Naval Surface Warfare Center, Crane, IN
Mandatory Source of Supply: Knox County Association for Remarkable Citizens, Inc., Vincennes, IN
Contracting Activity: DEPT OF THE NAVY, U.S. FLEET FORCES COMMAND

Service Type: Electronic Image Conversion
Mandatory for: Federal Bureau of Investigation: 9th & Pennsylvania Avenue NW, Washington, DC
Mandatory Source of Supply: ServiceSource, Inc., Oakton, VA
Contracting Activity: FEDERAL BUREAU OF INVESTIGATION, DEPT OF JUST/ FEDERAL BUREAU OF INVESTIGATION

Service Type: Mailroom Operation
Mandatory for: Defense Contract Management Agency, Barnes Building, Boston, MA
Mandatory Source of Supply: Community Workshops, Inc., Boston, MA
Contracting Activity: DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA)

Service Type: Janitorial/Custodial
Mandatory for: Rattlesnake National Recreation Area: Maclay Flat and Fort Fizzle, Missoula Ranger District, Missoula, MT
Contracting Activity: AGRICULTURE, DEPARTMENT OF, PROCUREMENT OPERATIONS DIVISION

Service Type: Administrative Services
Mandatory for: HUD Birmingham Field Office, Birmingham, AL
Mandatory Source of Supply: Nobis Enterprises, Inc., Marietta, GA
Contracting Activity: HOUSING AND URBAN DEVELOPMENT, DEPARTMENT OF

Service Type: Janitorial/Custodial
Mandatory for: Social Security Administration, 190 Stone Street, Watertown, NY
Mandatory Source of Supply: Jefferson County Chapter, NYSARC, Watertown, NY
Mandatory for: Social Security Administration Building, 517 N. Barry Street, Olean, NY
Mandatory Source of Supply: Cattaraugus County Chapter, NYSARC, Olean, NY
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA PBS R2 ACQUISITION MANAGEMENT DIVISION

Service Type: Janitorial/Custodial
Mandatory for: Southeast Federal Center: M Street SE, Washington, DC
Mandatory Source of Supply: Davis Memorial

Goodwill Industries, Washington, DC
Contracting Activity: PUBLIC BUILDINGS SERVICE, WPHBB—AGGREGATED REPAIR&ALTERATIONS CONTRACTS BRANCH

Service Type: Custodial service
Mandatory for: FEMA LA Recovery Office, Sherwood Forest Staging Area, 2695 Sherwood Forest, Baton Rouge, LA
Mandatory Source of Supply: Louisiana Industries for the Disabled, Inc., Baton Rouge, LA
Contracting Activity: FEDERAL EMERGENCY MANAGEMENT AGENCY, LOUISIANA CONTRACT OPS & MGMT BRANCH

Service Type: Custodial, Grounds Maintenance and Landscaping
Mandatory for: Cherokee National Forest-Tellico Ranger District, Tellico Plains, TN
Mandatory Source of Supply: Goodwill Industries—Knoxville, Inc., Knoxville, TN
Contracting Activity: AGRICULTURE, DEPARTMENT OF, AGRICULTURE, DEPARTMENT OF

Service Type: Disposal Support Services
Mandatory for: Gunter Air Force Base, AL
Mandatory Source of Supply: Goodwill Industries of Central Alabama, Inc., Montgomery, AL
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA SUPPORT SERVICES—DSS

Service Type: Custodial service
Mandatory for: Southside Locust Pt Baltimore MD—CBP, Baltimore, MD
Mandatory Source of Supply: The Arc Baltimore, Inc., Baltimore, MD
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, PROCUREMENT DIRECTORATE

Service Type: Janitorial/Custodial
Mandatory for: U.S. Army Reserve Center: Westover Air Reserve Base, Chicopee, MA
Mandatory Source of Supply: Allied Community Services, Inc., Enfield, CT
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–FT DIX (RC–E)

Service Type: Janitorial Service
Mandatory for: Corpus Christi Resident Office, USACE (SAO), 1920 N. Chaparral St., Corpus Christi, TX
Mandatory Source of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: DEPT OF THE ARMY, W076 ENDIST GALVESTON

Service Type: Grounds Maintenance
Mandatory for: U.S. Army Reserve Center: 443 Route 119 North, Indiana, PA
Contracting Activity: DEPT OF THE ARMY, W40M RHCO—ATLANTIC USAHCA

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–12614 Filed 6–13–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously furnished by such agencies.

DATES: *Comments must be received on or before:* July 14, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and a service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSNs—Product Names:
7920–00–NIB–0717—Squeegee, Floor, 24″
7920–00–NIB–0718—Squeegee, Floor, 24″, With Handle
7920–00–NIB–0719—Deck Brush, Rough Surface, 10″
7920–00–NIB–0720—Deck Brush, Rough Surface, 10″, With Handle
7920–00–NIB–0725—Handle, Steel, with Connector
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Mandatory for: Total Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI

Service

Service Type: Medical Equipment Set Bundling Service
Mandatory for: US Army, Headquarters III Corps, Fort Hood, TX
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: W40M USA HLTH CONTRACTING ACT

Deletions

The following services are proposed for deletion from the Procurement List:

Services

Service Type: Publications Distribution
Mandatory for: Beale Air Force Base, Beale AFB, CA
Contracting Activity: DEPT OF THE AIR FORCE, FA7014 AFDW PK

Service Type: Janitorial/Grounds Maintenance
Mandatory for: Border Patrol Station, Pecos, TX, Border Patrol Station, Van Horn, TX
Mandatory Source of Supply: Professional Contract Services, Inc., Austin, TX
Contracting Activity: U.S. CUSTOMS AND BORDER PROTECTION, BORDER ENFORCEMENT CTR DIV

Service Type: Janitorial/Custodial
Mandatory for: Veterans Affairs Connecticut Healthcare System: Newington Campus, Newington, CT
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: VETERANS AFFAIRS, DEPARTMENT OF, NAC

Service Type: Secure Document Destruction
Mandatory for: Blanchfield Army Community Hospital, Fort Campbell, KY
Mandatory Source of Supply: Goodwill Industries of Kentucky, Inc., Louisville, KY
Contracting Activity: DEPT OF THE ARMY, W40M SOUTH RGNL CONTR OFC EAST

Service Type: Janitorial Service
Mandatory for: USDA, Forest Service, Dubois Ranger District Office, Caribou–Targhee National Forest, Dubois, ID
Mandatory Source of Supply: Development Workshop, Inc., Idaho Falls, ID
Contracting Activity: FOREST SERVICE, CARIBOU–TARGHEE NATIONAL FOREST

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–12596 Filed 6–13–19; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for comment in response to the notice. This notice solicits comments on the extension of requirements relating to information collected to assist the Commission in soliciting and awarding contracts, OMB Control No. 3038–0031 (Procurement Contracts).

DATES: Comments must be submitted on or before August 13, 2019.

ADDRESSES: You may submit comments, identified by ''Procurement Contracts,'' and Collection Number 3038–0031, by any of the following methods:

- The Agency's website, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: William M. Roberson, Financial Management Branch, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581; phone: (202) 418–5367; fax: (202) 418–5414; email: *wroberson@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed collection of information listed below.

Title: Procurement Contracts (OMB Control No. 3038–0031). This is a request for an extension of a currently approved information collection.

Abstract: The information collected under this request is gathered through the use of forms specific to a contract or contracting action. The standard forms are prescribed for use for non-personal services, construction, award of contracts and solicitations as by agencies in connection with the procurement of supplies, purchase and delivery orders, specified in the Federal Acquisition Regulations (48 CFR 1–53). The information provided on the forms is specific and generally does not require additional information or questions.

With respect to the following collection of information, the Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect changed circumstances below.

The information collection consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

Respondents/Affected Entities: Vendors and contractors.

Estimated number of respondents: 758.

Estimated burden hours per response: 2 hours.

Estimated total annual burden on respondents: 1,516 hours.

Frequency of responses: Annually.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 10, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–12531 Filed 6–13–19; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2018–0033]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

[1] 17 CFR 145.9.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to reinstate without change a previously approved information collection titled, ''Generic Information Collection Plan to Conduct Cognitive and Pilot Testing of Research Methods, Instruments, and Forms.''

DATES: Written comments are encouraged and must be received on or before August 13, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2018–0033 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan to Conduct Cognitive and Pilot Testing of Research Methods, Instruments, and Forms.

OMB Control Number: 3170–0055.

Type of Review: Reinstatement without change of a previously approved collection.

Affected Public: Individuals and households.

Estimated Number of Annual Respondents: 1,730.

Estimated Total Annual Burden Hours: 1,820.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Bureau is charged with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. In order to improve its understanding of how consumers engage with financial markets, the Bureau seeks to obtain approval for a generic information collection plan to conduct research to improve the quality of data collection by examining the effectiveness of data-collection procedures and processes, including potential psychological and cognitive issues.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 11, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–12586 Filed 6–13–19; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2019–0034]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to reinstate with change a previously approved information collection, titled, ''Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials.''

DATES: Written comments are encouraged and must be received on or before August 13, 2019 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Electronic:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2019–0034 in the subject line of the message.
- *Mail:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials.

OMB Control Number: 3170–0022.

Type of Review: Reinstatement with change of a previously approved collection.

Affected Public: Individuals and households.

Estimated Number of Annual Respondents: 16,400.

Estimated Total Annual Burden Hours: 8,488.

Abstract: This is a request for a generic clearance for the Consumer Financial Protection Bureau (''Bureau'') for the development and testing of consumer financial disclosures and related materials. The research will

result in recommendations for the development of and revisions to such disclosures and related materials. The research activities may be conducted by the Bureau or its contractors, and will include cognitive psychological testing methods or rigorous quantitative evaluations. This approach has been demonstrated to be feasible and valuable by the Bureau and other agencies in developing disclosures and related materials. The planned research activities will be conducted with the goal of creating effective disclosures and related materials that will help consumers understand the features of consumer financial products and services. The Bureau is modifying this generic information collection plan to provide for enhanced public notice and opportunity to comment to OMB for each request submitted under this generic.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 11, 2019.

Darrin A. King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2019–12585 Filed 6–13–19; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0073]

Agency Information Collection Activities; Proposed Collection; Comment Request; Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (CPSC) requests comments on a proposed extension of approval of a collection of information regarding a form used to verify whether pools and spas are in compliance with the Virginia Graeme Baker Pool and Spa Safety Act. The Office of Management and Budget (OMB) previously approved the collection of information under OMB Control No. 3041–0142. CPSC will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from OMB.

DATES: Submit written or electronic comments on the collection of information by August 13, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0073, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number, CPSC–2009–0073, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Bretford Griffin, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Virginia Graeme Baker Pool and Spa Safety Act Verification of Compliance Form.

OMB Number: 3041–0142.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Public pools and spa facilities.

Estimated Number of Respondents: 100 pools or facilities.

Estimated Time per Response: 3 hours to inspect a pool or spa facility.

Total Estimated Annual Burden: The total testing burden hours are 300 (100 inspections × 3 hours per inspection). The total annual cost of time to inspect all facilities is estimated at $17,500.

General Description of Collection: On December 19, 2008, the Virginia Graeme Baker Pool and Spa Safety Act (Act) became effective (Pub. L. 110–140). The Act applies to public swimming pools and spas, and it requires that each swimming pool and spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or drain cover under section 1404(b) of the Act.

On August 5, 2011, the CPSC published a final rule incorporating by reference ANSI/APSP–16 2011 as the successor standard, effective September 6, 2011. 76 FR 47436. On May 24, 2019, the CPSC published a direct final rule incorporating by reference ANSI/APSP–16 2017 as the next successor standard. Absent adverse comment to the direct final rule by June 24, 2019, ANSI/APSP–16 2017 will become effective November 24, 2020. 84 FR 24021. The Act requires that, in addition to having the anti-entrapment devices or systems, each public pool and spa in the United States with a single main drain other than an unblockable drain shall be equipped with one or more of the following devices or systems designed to prevent entrapment by pool or spa drains including a safety vacuum release system, suction-limiting vent system, gravity drainage system, automatic pump shut-off system or drain disablement. The CPSC will collect information through the verification of compliance form to identify drain covers, pools, and spas that do not meet the performance requirements in ANSI/APSP–16 2011

(or, after November 24, 2020, its successor standard, ANSI/APSP–16 2017) and the Act.

Request for Comments: The CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
—Whether the estimated burden of the proposed collection of information is accurate;
—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–12550 Filed 6–13–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Updated TR–12 Fuel Related Rate Adjustment Policy

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC) has published an updated TR–12 Fuel Relate Rate Adjustment Policy. This version of Policy No. TR–12 supersedes all previous versions of TR–12, except to the extent that a previous version is explicitly referenced as the basis for payment in an agreement with SDDC. This policy reflects the new Defense Freight Transportation services (DFTS) contract. A summary of changes is listed under **SUPPLEMENTARY INFORMATION**.

DATES: The mileage-based formula and the increment change will take effect on 10 June 2019 for FAK and TPS. No changes made to PSSFC FRA effective dates. This policy is in effect until superseded or withdrawn in writing.

FOR FURTHER INFORMATION CONTACT: Kevin Snider, (618) 220–7129.

SUPPLEMENTARY INFORMATION:

1. The FRA policy applies to commercial Transportation Service Provider (TSP) freight movements within the United States. This policy provides the transportation industry, including individual TSP(s), economic adjustment and reasonable relief for unanticipated increases in diesel fuel prices. TSP(s) are urged to consider anticipated variation in fuel prices when submitting or supplementing rates during rate filing and/or bid submission periods.

2. FRA for freight-all-kinds (FAK) and transportation protective service (TPS) truckload (TL) shipments will be calculated using a mileage-based formula. The current percentage of line-haul formula will remain in effect for less-than-truckload (LTL) shipments. The percentage of line-haul increment factor will increase from $.10 to $.13. The baseline will remain at $2.50.

3. The above changes will not apply to the Protective Security Service Freight Contract (PSSFC) for Defense Distribution Center, Warner Robins, GA (DDWG), or Defense Freight Transportation Services (DFTS). Shipments for PSSFC DDWG will be calculated using a percentage of line haul formula with $.10 increments. PSSFC DDWG and DFTS will remain at $2.50.

4. SDDC will not pay FRA on Negotiated shipments. Bids submitted on or after 1 June 2013 must be submitted as an all-inclusive rate. SDDC will not pay FRA on ''Spot Bid'' or One Time Only (OTO) personal property movements, regardless of mode. SDDC will not pay FRA for rail, barge, pipeline, or air shipment. SDDC will not pay FRA on commercial security escort vehicles (CSEV).

5. Written provision will be made in SDDC regulations, Tariff, and solicited tender agreements for FRAs. At the sole discretion of the appropriate Contracting Officer, this policy may be applied to Federal Acquisitions Regulation (FAR) contracts. SDDC has no obligation whatsoever to apply this policy to FAR contracts other than where the appropriate Contracting Officer determines that it shall apply.

Miscellaneous: This announcement can be accessed via the SDDC website at: *http://www.sddc.army.mil.*

Jeff Olenick,

Director, Movement Support.

[FR Doc. 2019–12594 Filed 6–13–19; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0033]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Transition and Postsecondary Programs for Students With Intellectual Disabilities (TPSID) Evaluation Protocol

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 15, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0033. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Shedita Alston, 202–453–7090.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information

collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSID) Evaluation Protocol.

OMB Control Number: 1840–0825.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 50.

Total Estimated Number of Annual Burden Hours: 1,110.

Abstract: In October 2015, the Institute for Community Inclusion (ICI), UMass Boston received a five-year cooperative agreement from the Office of Postsecondary Education to serve as the National Coordinating Center (NCC) for colleges and universities implementing inclusive higher education programs for students with intellectual disabilities, including 25 newly-funded model demonstration projects aimed at creating inclusive comprehensive transition and postsecondary programs for students with intellectual disabilities known as Transition and Postsecondary Programs for Students with Intellectual Disabilities (TPSIDs).

To reduce respondent burden, the NCC has streamlined and simplified the previously approved evaluation system for the TPSID programs. The NCC will enhance the collection and analyses of longitudinal follow up data from the new 25 TPSID model programs via an already developed and previously OMB approved evaluation system for the TPSID programs. The revised data collection system is part of an evaluation effort. The system will collect program data at the institutions from TPSID program staff via an online, secure data management system. To reduce respondent burden, the NCC has streamlined and simplified the previously approved evaluation system for the TPSID programs. The NCC will enhance the collection and analyses of longitudinal follow up data from the new 25 TPSID model programs via an already developed and previously OMB approved evaluation system for the TPSID programs. The revised data collection system is part of an evaluation effort. The system will collect program data at the institutions from TPSID program staff via an online, secure data management system.

Dated: June 11, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–12599 Filed 6–13–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4678–052; Project No. 4679–049]

New York Power Authority; Notice of Intent To File License Application, Filing of Pre-Application Document (PAD), Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notices of Intent to File License Applications for New Licenses and Commencing Pre-filing Process.

b. *Project Nos.:* 4678–052 and 4679–049.

c. *Dated Filed:* May 3, 2019.

d. *Submitted By:* New York Power Authority.

e. *Name of Project:* Crescent Hydroelectric Project (P–4678–052) and Vischer Ferry Hydroelectric Project (P–4679–049).

f. *Location:* Both projects are located on the lower Mohawk River. The Crescent Project is located at river mile 4 of the Mohawk River in Saratoga, Albany, and Schenectady Counties, New York. The Vischer Ferry Project is located at river mile 10 of the Mohawk River, in Albany and Schenectady Counties, New York. The projects do not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Tara Groom, New York Power Authority, 30 South Pearl Street, Albany, NY 12207. Phone: (518) 433–6748 or email at *CVF.Relicensing@nypa.gov.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278 or email at *jody.callihan@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating New York Power Authority as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. New York Power Authority filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONline Support@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission's staff Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.* In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–4678–052 (for the Crescent Hydroelectric Project) and/or P–4679–049 (for the Vischer Ferry Hydroelectric Project).

All filings with the Commission must bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by August 9, 2019.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the projects at the times and places noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Evening Scoping Meeting

Date: Wednesday, July 10, 2019.
Time: 7:00 p.m.
Location: Hilton Garden Inn (Whitney/Travers Room), 30 Clifton Country Road, Clifton Park, New York, 12065.
Phone: (518) 371–7777.

Daytime Scoping Meeting

Date: Thursday, July 11, 2019.
Time: 9:00 a.m.
Location: Hilton Garden Inn (Whitney/Travers Room), 30 Clifton Country Road, Clifton Park, New York, 12065.
Phone: (518) 371–7777.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Environmental Site Review

The potential applicant and Commission staff will conduct site visits of the projects on Wednesday, July 10, 2019, starting at 9:30 a.m. All participants should meet in the parking lot of the Crescent Hydroelectric Project, located at 60 Cohoes Crescent Rd., Cohoes, NY 12047 (Latitude 42.8056/Longitude–73.7227. We will conduct the site visit for the Vischer Ferry Hydroelectric Project after the Crescent Project site visit. All participants are responsible for their own transportation. Anyone with questions about the site visits should contact Tara Groom of the New York State Power Authority at (518) 433–6748.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the projects.

Dated: June 10, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–12584 Filed 6–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2633–036; ER10–2717–036; ER10–2309–005; ER18–1960–001; ER10–1626–011.
Applicants: Birchwood Power Partners, L.P., EFS Parlin Holdings LLC, Elwood Energy, LLC, Tenaska Pennsylvania Partners, LLC, Tenaska Virginia Partners, LP.
Description: Notice of Change in Status of Birchwood Power Partners, L.P., et al.
Filed Date: 6/7/19.
Accession Number: 20190607–5150.
Comments Due: 5 p.m. ET 6/28/19.

Docket Numbers: ER11–2774–004.
Applicants: Virginia Electric and Power Company, Dominion Energy Generation Marketing, Inc., Dominion Energy Nuclear Connecticut, Inc., Dominion Bridgeport Fuel Cell, LLC, Dominion Energy South Carolina, Inc.
Description: Notice of Non-Material Change in Status of Dominion Resources Services, Inc., on behalf of Virginia Electric and Power Company, et al.
Filed Date: 6/7/19.

Accession Number: 20190607–5165.
Comments Due: 5 p.m. ET 6/28/19.

Docket Numbers: ER19–834–000.
Applicants: MDU Resources Group, Inc., Montana-Dakota Utilities Co.
Description: Response of MDU Resources Group, Inc. to May 22, 2019 Letter requesting additional information.
Filed Date: 6/7/19.
Accession Number: 20190607–5162.
Comments Due: 5 p.m. ET 6/28/19.

Docket Numbers: ER19–1276–000.
Applicants: Ameren Illinois Company.
Description: Motion to Intervene, Formal Challenge, and Request for Confidential Treatment of Southwestern Electric Cooperative, Inc.
Filed Date: 4/15/19.
Accession Number: 20190415–5267.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–1400–001.
Applicants: Emera Maine.
Description: Tariff Amendment: Deficency Response #1 (ER19–1400–000) to be effective 6/1/2019.
Filed Date: 6/7/19.
Accession Number: 20190607–5125.
Comments Due: 5 p.m. ET 6/28/19.

Docket Numbers: ER19–1470–001.
Applicants: ISO New England Inc., Emera Maine.
Description: Tariff Amendment: Emera Maine; Response to Deficiency Letter to be effective 6/1/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5046.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2084–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2019–06–07—Depreciation Rates & TCJA to be effective 1/1/2018.
Filed Date: 6/10/19.
Accession Number: 20190610–5000.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2085–000.
Applicants: Citigroup Energy Canada ULC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 6/11/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5038.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2086–000.
Applicants: Wildflower Energy LP.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 6/11/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5054.
Comments Due: 5 p.m. ET 7/1/19.

Docket Numbers: ER19–2087–000.
Applicants: Boston Energy Trading and Marketing LLC.
Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 6/11/2019.
Filed Date: 6/10/19.
Accession Number: 20190610–5056.
Comments Due: 5 p.m. ET 7/1/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 10, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–12582 Filed 6–13–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0322; FRL–9994–52]

Ortho-Pthalaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA, CAS No. 643–79–8) to treat the coolant fluid of the internal active thermal control system of the International Space Station to control aerobic/microaerophilic bacteria in the aqueous coolant. The applicant proposes the use of a new chemical which has not been registered by EPA. Therefore, in accordance with the Code of Federal Regulations (CFR), EPA is soliciting public comment before making the decision whether to grant the exemption.

DATES: Comments must be received on or before July 1, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2019–0322, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION: In accordance with the regulations at 40 CFR 166.24(a)(1), EPA is soliciting public comment before making the decision whether to grant the exemption.

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer (North American Industrial Classification System (NAICS) Code 32532) or involved with the International Space Station. This listing is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. NASA has requested the EPA Administrator to issue a specific exemption for the use of ortho-phthalaldehyde (OPA) in the coolant of the internal active thermal control system (IATCS) of the International Space Station (ISS) to control aerobic/microaerophilic bacteria in the aqueous coolant. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant stated that it has considered the registered biocide alternatives and has concluded that OPA is the most effective biocide which meets the requisite criteria including: The need for safe, non-intrusive implementation and operation in a functioning system; the ability to control existing planktonic and biofilm-residing micro-organisms; a negligible impact on system-wetted materials of construction; and a negligible reactivity with existing coolant additives. The ISS would not have an adequate long-term solution for controlling the micro-organisms in the IATCS coolant without the use of OPA. The OPA is incorporated into a porous resin material contained in a stainless-steel canister. The canister containing the OPA-incorporated resin is inserted into a coolant system loop, using flexible hose and quick disconnects, and is placed in-line for 8 hours to deliver the OPA into the fluid. As the coolant fluid flows through the canister, the OPA elutes from the resin material into the coolant fluid. The total volume of the circulatory loops of the IATCS is 829 liters. The maximum concentration would be 500 milligrams (mg) of OPA per liter of coolant fluid. A total of 414,500 mg of OPA would be needed for the entire system. The OPA is incorporated into the resin at 210 mg OPA per cm^3 resin, resulting in a potential total use of 1,974 cm^3 of the OPA-containing resin. The level of OPA in the coolant is monitored periodically, and because OPA degrades over time, the concentration decreases to a level that is no longer effective in about 1 to 2 years. At this point, replenishment with new OPA-containing canisters is required. EPA has authorized similar emergency exemptions for this use since 2011. With the decision to extend the mission of the ISS to 2024, the need for this use is expected to continue for the duration.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (*i.e.,* an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by NASA.

Authority: 7 U.S.C. 136 *et seq.*

Dated: June 3, 2019.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2019–12533 Filed 6–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9045–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/03/2019 through 06/07/2019

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20190127, Final, NOAA, MA, Jonah Crab Fishery Management Plan, Review Period Ends: 07/15/2019, Contact: Allison Murphy 978–281–9122.

EIS No. 20190128, Final, APHIS, REG, Regulation of the Importation, Interstate Movement, and Intrastate Movement of Plant Pests, Review Period Ends: 07/15/2019, Contact: Colin Stewart 301–851–2237.

EIS No. 20190129, Final, BLM, NV, Rossi Mine Expansion Project, Review Period Ends: 07/15/2019, Contact: Janice Stadelman 775–753–0346.

EIS No. 20190130, Final, BLM, NV, Burning Man Event Special Recreation Permit, Review Period Ends: 07/15/2019, Contact: Mark Hall 775–623–1500.

Amended Notice

EIS No. 20190092, Final Supplement, USACE, AL, Mobile Harbor, Mobile, Alabama Integrated Final General Evaluation Report with Supplemental Environmental Impact Statement, Review Period Ends: 07/18/2019, Contact: Jennifer L. Jacobson 251–690–2724.

Revision to FR Notice Published 06/07/2019; Extending the Comment Period from 06/17/2019 to 07/18/2019.

Dated: June 11, 2019.

Robert Tomiak,

Director, Office of Federal Activities.

[FR Doc. 2019–12595 Filed 6–13–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0710]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 13, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0710.

Title: Policy and Rules Under Parts 1 and 51 Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, Sections 47 CFR 1.1403–1.1404; 47 CFR part 51; 47 CFR 51.100–51.807; 47 CFR 20.11.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 15,282 respondents; 1,067,987 responses.

Estimated Time per Response: 0.50–4,000 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1–4, 201–205, 214, 224, 251, 252, and 303(r) of the Communications Act of 1934, as amended, and section 601 of the Telecommunications Act of 1996. 47 U.S.C. 151–154, 201–205, 224, 251, 252, 303(r), and 601.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Total Annual Burden: 645,798 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impacts.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission adopted rules to implement the First Report and Order on Reconsideration issued in CC Docket No. 96–98. That Order implemented parts of sections 251 and 252 of the Telecommunications Act of 1996 that affect local competition. Incumbent local exchange carriers (ILECs) are required to offer interconnection, unbundled network elements (UNEs), transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services and rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2019–12583 Filed 6–13–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receivership

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for the following insured depository institution, was charged with the duty of winding up the affairs of the former institution and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIP

Fund	Receivership name	City	State	Termination date
10154	Benchmark Bank	Aurora	IL	6/1/2019

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination date listed above, the Receivership has been terminated, the Receiver has been discharged, and the Receivership has ceased to exist as a legal entity.

Dated at Washington, DC, on June 11, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–12553 Filed 6–13–19; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114; Docket No. 2019–0003; Sequence No. 9]

Information Collection; Right of First Refusal of Employment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the FAR Council invites the public to comment upon a renewal concerning right of first refusal employment.

DATES: Submit comments on or before August 13, 2019.

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Divison (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0114, Right of First Refusal of Employment.

Instructions: Please submit comments only and cite Information Collection 9000–0114, Right of First Refusal of Employment, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, at 202–208–4949 or via email at *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

B. Purpose

As prescribed in FAR 7.305(c), the clause at FAR 52.207–3, Right of First Refusal of Employment, deals with adversely affected or separated Government employees resulting from the conversion of work from in-house performance to performance by contract. The clause requires the contractor to give these employees an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

C. Annual Reporting Burden

Number of Respondents: 10.

Responses per Respondent: 1.

Total Responses: 10.

Hours per Response: 3.

Total Burden Hours: 30.

Frequency of Collection: On occasion.

Affected Public: Businesses or other for-profit and not-for profit organizations.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: June 7, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–12570 Filed 6–13–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project ''Systematic Review Data Repository.'' In accordance with the Paperwork Reduction Act, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received on or before 60 days after date of publication.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by emails at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Systematic Review Data Repository (SRDR)

In 1997, AHRQ launched an initiative to promote evidence-based practice in everyday care through establishment of the Evidence-based Practice Center (EPC) Program. Since then, the EPCs have been reviewing all relevant scientific literature on a wide spectrum of clinical and health services topics to produce various types of evidence reports. A majority of these evidence reports are systematic reviews (SRs), which are used as evidence bases for clinical practice guidelines, research agendas, healthcare coverage, and other health related policies. Performing SRs is costly in time, labor, and money. Moreover, there is an increasing expectation of quicker turnaround in producing SRs to accommodate the fast moving pace of innovations and new scientific discoveries in healthcare. Some SRs overlap or are replicated; independent teams of SR producers often extract data from the same studies, resulting in replication of work. Current methodology makes it difficult to harness and reuse previous work when updating SRs.

In an effort to reduce the economic burden of conducting SRs, the EPC Program undertook development of a collaborative, Web-based repository of systematic review data called the Systematic Review Data Repository (SRDR). This resource serves as both an archive and data extraction tool, shared among organizations and individuals producing SRs worldwide, enabling the creation of a central database of SR data. This database is collaboratively vetted, freely accessible, and integrates seamlessly with reviewers' existing workflows, with the ultimate goal of facilitating the efficient generation and update of evidence reviews, and thus speeding and improving policy-making with regards to health care. Currently, there are two versions of the database: (1) The original version called ''SRDR''; and (2) an upgraded version with increased functionality. Further upgrade of the database is planned for the next year (to be called ''SRDR 2.0''). The SRDR project encompasses the various iterations of the database.

The SRDR project aims to achieve the following goals:

(1) Create online easy-to-use Web-based tools for conducting systematic reviews to facilitate extraction of data from primary studies;

(2) Develop an open-access searchable archive of key questions addressed in systematic reviews;

(3) Maintain a public repository of primary study data including provision of technical support for repository users; and

(4) Develop a process for making summary data from systematic reviews digitally shareable to end-users.

This study is being conducted by AHRQ through its contractor, Brown University, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services, including database development. 42 U.S.C 299a(a)(1) and (8).

Method of Collection

To achieve the goals of this project the following data collections will be implemented:

(1) Collect registration data and information on SRs from SR producers who will populate the SRDR system.

SRDR uses a three-tiered categorization of users and collection of registration data that depends on the type of user: (1) ''Contributors'' are SR producers who use SRDR as a tool to support production of the SR and share scientific data from their SRs. Registration data will be collected from these users; (2) ''Commentators'' provide comments (*i.e.* opinions) on publicly available scientific data in SRDR. Registration data will be collected from these users; (3) ''General public'' users only view scientific data publicly available in SRDR. No data will be collected from these type of users.

All Contributors and Commentators will undergo a simple self-registration process by providing a username, password, email address, and institution. Collection of registration data from Contributors and Commentators is required due to the use of SRDR both as a database and as a tool for assisting in the production of a SR, including providing comments in the various sections of a particular project on SRDR. In addition, provision of an email address and institution information allows the administrators of SRDR to confirm that requests are being made by actual people and not potentially malicious software code such as bots and other cybersecurity threats.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in the SRDR. In 2017, 176 users registered as Commentators and 206 users registered as Contributors. Registration will take approximately 2 minutes per user. We thus calculate the total burden hours required for registration for all users annually is 12.73 hours.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Registration of users as Commentators or Contributors	382	1	2/60	12.73
Total	382			12.73

Exhibit 2 shows the estimated cost burden associated with the respondents' time to participate in the SRDR. The total cost burden to respondents is estimated at an average of $501.82 annually.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Registration of users as Commentators or Contributors	382	12.73	[a] $39.42	$501.82
Total	382	12.73		501.82

* National Compensation Survey: Occupational wages in the United States May 2018, ''U.S. Department of Labor, Bureau of Labor Statistics.'' Available at: *https://www.bls.gov/oes/current/oes290000.htm.*

[a] Based on the mean wages for Healthcare Practitioners and Technical Occupations, 29–0000.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in AHRQ's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2019–12606 Filed 6–13–19; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–1876]

Testing for Biotin Interference in In Vitro Diagnostic Devices; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft document entitled ''Testing for Biotin Interference in In Vitro Diagnostic Devices; Draft Guidance for Industry.'' The draft guidance document provides FDA's recommendations on the testing for interference by biotin on the performance of in vitro diagnostic devices (IVDs). The draft guidance is intended to help device developers and clinicians understand how FDA recommends biotin interference testing should be performed and how the results of the testing should be communicated to end users, including clinical laboratories and clinicians. FDA also recommends that manufacturers of currently marketed devices consider these draft recommendations.

DATES: Submit either electronic or written comments on the draft guidance by August 13, 2019 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–D–1876 for ''Testing for Biotin Interference in In Vitro Diagnostic Devices; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed

except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002 or the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 240–402–8010. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Shruti Modi, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Testing for Biotin Interference in In Vitro Diagnostic Devices.'' The draft guidance document provides FDA's recommendations on the testing for interference by biotin on the performance of IVDs. The draft guidance is intended to help device developers and clinicians understand how FDA recommends that biotin interference testing be performed and how the results of the testing should be communicated to end users, including clinical laboratories and clinicians. FDA also recommends that manufacturers of currently marketed devices consider these draft recommendations. The recommendations apply to IVDs, as well as devices that are licensed under section 351 of the Public Health Service Act (42 U.S.C. 262) and used in donor screening, that use biotin technology.

Biotin, also known as vitamin B7, is a water-soluble vitamin often found in multivitamins, prenatal vitamins, and dietary supplements marketed for hair, skin, and nail growth. FDA has become aware of potential biotin interference with IVDs that use biotin/avidin interactions as part of the device technology. Biotin in patient samples can cause falsely high or falsely low results, depending on the test.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on testing for biotin interference in in vitro diagnostic devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 809 have been approved under OMB control number 0901–0485.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*, or *https://www.regulations.gov*.

Dated: June 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12564 Filed 6–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2272]

Request for Nominations From Industry Organizations Interested in Participating in the Selection Process for Nonvoting Industry Representatives and Request for Nominations for Nonvoting Industry Representatives on the Cellular, Tissue, and Gene Therapies Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry representative to serve on the Cellular, Tissue, and Gene Therapies Advisory Committee for the Center for Biologics Evaluation and Research (CBER) notify FDA in writing. FDA is also requesting nominations for a non-voting industry representative(s) to serve on the Cellular, Tissue, and Gene Therapies Advisory Committee Blood Products Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

DATES: Any industry organization interested in participating in the selection of an appropriate non-voting member to represent industry interests must send a letter stating that interest to FDA by July 15, 2019 (see sections I and II of this document for further details). Concurrently, nomination materials for prospective candidates should be sent to FDA by July 15, 2019.

ADDRESSES: All statements of interest from industry organizations interested in participating in the selection process of nonvoting industry representative(s) should be sent to Prabhakara Atreya and Jeannette Devine (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal at: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm.*

Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 6306, Silver Spring, MD 20993–0002, 240–402–8006, Fax: 301–595–1307, email: *Prabhakara.Atreya@fda.hhs.gov;* and Jeannette Devine, Division of Scientific Advisors and Consultants, Center for Biologics Evaluation and Research, 10903 New Hampshire Ave., Bldg. 71, Rm. 6334, Silver Spring, MD 20993–0002, 240–402–0403, Fax: 301–595–1307, *Jeannette.Devine@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency intends to add a nonvoting industry representative(s) to the following advisory committee:

I. CBER Cellular, Tissue, and Gene Therapies Advisory Committee

The Cellular, Tissue, and Gene Therapies Advisory Committee (the Committee) reviews and evaluates available data relating to the safety, effectiveness, and appropriate use of human cells, human tissues, gene transfer therapies and xenotransplantation products which are intended for transplantation, implantation, infusion and transfer in the prevention and treatment of a broad spectrum of human diseases and in the reconstruction, repair or replacement of tissues for various conditions. The Committee also considers the quality and relevance of FDA's research program which provides scientific support for the regulation of these products and makes appropriate recommendations to the Commissioner of Food and Drugs.

II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate non-voting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations; and a list of all nominees along with their current resumes. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

III. Application Procedure

Individuals may self-nominate, and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current curriculum vitae, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as non-voting industry representatives will not participate in the selection process).

FDA seeks to include the views of women, men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12565 Filed 6–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2396]

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Psychopharmacologic Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on July 31, 2019, from 8 a.m. to 5 p.m.

ADDRESSES: Tommy Douglas Conference Center, The Ballroom, 10000 New Hampshire Ave., Silver Spring, MD 20903. The conference center's telephone number is 240–645–4000 and the website address is *https://www.tommydouglascenter.com/.* Answers to commonly asked questions about FDA Advisory Committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2019–N–2396. The docket will close on July 30, 2019. Submit either electronic or written comments on this public meeting by July 30, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 30, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 30, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before July 17, 2019, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you

do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–2396 for ''Psychopharmacologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jay R. Fajiculay, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, *PDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss new drug application (NDA) 209500, lumateperone tosylate capsules for oral administration, submitted by Intra-Cellular Therapies, Inc., for the treatment of schizophrenia.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before July 17, 2019, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 9, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 10, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Jay Fajiculay (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12558 Filed 6–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2256]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization.

FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by July 15, 2019, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by July 15, 2019. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2019.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, or by Fax: 301–847–8640. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, email: *kimberly.hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels: contact the appropriate contact person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Yinghua Wang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 31, Rm. 2412, Silver Spring, MD 20993–0002, 301–796–9033, email: *Yinghua.Wang@fda.hhs.gov*.	Arthritis Advisory Committee.
Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2438, Silver Spring, MD 20993–0002, 301–796–9005, email: *Kalyani.Bhatt@fda.hhs.gov*.	Bone, Reproductive and Urological Drugs Advisory Committee; Psychopharmacologic Drugs Advisory Committee.
Jennifer Shepherd, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–4043, email: *Jennifer.Shepherd@fda.hhs.gov*.	Medical Imaging Drugs Advisory Committee.
Lauren Hotaki, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2426, Silver Spring, MD 20993–0002, 301–796–2721, email: *Lauren.Hotaki@fda.hhs.gov*.	Oncologic Drugs Advisory Committee.
Cindy Chee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2430, Silver Spring, MD 20993–0002, 301–796–0889, email: *Cindy.Chee@fda.hhs.gov*.	Pharmacy Compounding Advisory Committee.
Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G610, Silver Spring, MD 20993–0002, 301–796–6875, email: *Patricio.Garcia@fda.hhs.gov*.	Clinical Chemistry and Clinical Toxicology Devices Panel; Gastroenterology and Urology Devices Panel; Obstetrics and Gynecology Devices Panel.
Sara Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G616, Silver Spring, MD 20993–0002, 301–796–7047, email: *Sara.Anderson@fda.hhs.gov*.	Dental Products Devices Panel; National Mammography Advisory Committee; Orthopaedic and Rehabilitation Devices Panel.
Evella Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G640, Silver Spring, MD 20993–0002, 301–796–6683, email: *Evella.Washington@fda.hhs.gov*.	Circulatory Systems Devices Panel.
Joannie Adams-White, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5519, Silver Spring, MD 20993–0002, 301–796–5421, email: *Joannie.Adams-White@fda.hhs.gov*.	Medical Devices Dispute Resolution Panel.
Aden Asefa, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G642, Silver Spring, MD 20993–0002, 301–796–0400, email: *Aden.Asefa@fda.hhs.gov*.	Immunology Devices Panel; Microbiology Devices Panel; Radiological Devices Panel.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Arthritis Advisory Committee—Knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties.	1—Voting	September 30, 2019.
Bone, Reproductive and Urological Drugs Advisory Committee—Knowledgeable in the fields of obstetrics, gynecology, endocrinology, pediatrics, epidemiology or statistics, and related specialties.	1—Voting	Immediately.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	June 30, 2019.
Medical Imaging Drugs Advisory Committee—Knowledgeable in the fields of nuclear medicine, radiology, epidemiology, statistics, and related specialties.	1—Voting	Immediately.
Oncologic Drugs Advisory Committee—Knowledgeable in the fields of general oncology, pediatric oncology, hematologic oncology, immunologic oncology, biostatistics, and other related professions.	1—Voting	June 30, 2019.
Pharmacy Compounding Advisory Committee—Knowledgeable in the fields of pharmaceutical compounding, pharmaceutical manufacturing, pharmacy, medicine, and other related specialties.	1—Voting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctors of Medicine or Philosophy with experience in clinical chemistry (*e.g.,* cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Non-Voting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists, and nephrologists.	1—Non-Voting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electro-surgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Non-Voting	Immediately.
Dental Products Device Panel—Dentists, engineers, and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Non-Voting	October 30, 2019.
National Mammography Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	1—Non-Voting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Non-Voting	Immediately.
Circulatory Systems Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Non-Voting	Immediately.
Medical Devices Dispute Resolution—Experts with broad, cross-cutting scientific, clinical, analytical, or mediation skills.	1—Non-Voting	Immediately.
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Non-Voting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, *e.g.,* pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, *e.g.,* hepatologists; molecular biologists.	1—Non-Voting	Immediately.
Radiology Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Non-Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. Arthritis Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases.

B. Bone, Reproductive and Urologic Drugs Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the practice of obstetrics, gynecology, and related specialties.

C. Psychopharmacologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the practice of psychiatry and related fields.

D. Medical Imaging Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

E. Oncologic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of cancer.

F. Pharmacy Compounding Advisory Committee

Provides advice on scientific, technical, and medical issues concerning drug compounding by pharmacists and licensed practitioners.

G. Certain Panels of the Medical Devices Advisory Committee

Reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, advises on the classification or reclassification of devices into one of three regulatory categories; advises on any possible risks to health associated with the use of devices; advises on formulation of product development protocols; reviews premarket approval applications for medical devices; reviews guidelines and guidance documents; recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; advises on the necessity to ban a device; and responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner of Food and Drugs on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES** section of this document), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: June 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12566 Filed 6–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0163]

Hospira, Inc., et al.; Withdrawal of Approval of 12 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of 12 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Trang Tran, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1671, Silver Spring, MD 20993–0002, 240–402–7945, *Trang.Tran@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040664	A-Methapred (methylprednisolone sodium succinate) for Injection USP, Equivalent to (EQ) 40 milligrams (mg) base/vial.	Hospira, Inc., 275 North Field Dr., Building H1, Lake Forest, IL 60045.
ANDA 040665	A-Methapred (methylprednisolone sodium succinate) for Injection USP, EQ 125 mg base/vial.	Do.
ANDA 060462	Garamycin (gentamicin sulfate) Cream USP, EQ 0.1% base.	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033.
ANDA 061533	Mycostatin (nystatin) Oral Suspension USP, 100,000 units/milliliter (mL).	Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543.
ANDA 071051	Astramorph/PF (morphine sulfate) Injection USP, 0.5 mg/mL.	Fresenius Kabi USA, LLC, Three Corporate Dr., Lake Zurich, IL 60047.
ANDA 071052	Astramorph/PF (morphine sulfate) Injection USP, 1 mg/mL	Do.
ANDA 071053	Astramorph/PF (morphine sulfate) Injection USP, 1 mg/mL	Do.
ANDA 075656	Morphine Sulfate Extended-Release Tablets, 100 mg	Watson Laboratories, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 425 Privet Rd., Horsham, PA 19044.
ANDA 078815	Oxaliplatin for Injection, 50 mg/vial and 100 mg/vial	Hospira, Inc.
ANDA 088119	Isoniazid Tablets USP, 300 mg	Duramed Pharmaceuticals, Inc., Subsidiary of Teva Pharmaceuticals USA, Inc., 400 Interpace Pky., Morris Corporate Center III, Parsippany, NJ 07054.
ANDA 088231	Isoniazid Tablets USP, 100 mg	Do.
ANDA 091597	Gemcitabine for Injection USP, EQ 200 mg base/vial and EQ 1 gram base/vial.	Sagent Pharmaceuticals, Inc., 1901 North Roselle Rd., Suite 450, Schaumburg, IL 60195.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of July 15, 2019. Approval of each entire application is withdrawn, including any strengths or products inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in the table that are in inventory on July 15, 2019, may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: June 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12560 Filed 6–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2224]

Arthritis Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a

forthcoming public advisory committee meeting of the Arthritis Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on July 25, 2019, from 8:30 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2019–N–2224. The docket will close on July 24, 2019. Submit either electronic or written comments on this public meeting by July 24, 2019. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before July 24, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of July 24, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before July 11, 2019, will be provided to the committee. Comments received after that date will be taken into consideration by FDA.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–2224 for ''Arthritis Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see the **ADDRESSES** section), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' FDA will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify the information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Yinghua S. Wang, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, Fax: 301–847–8533, email: *AAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The committee will discuss supplemental new drug application (sNDA) 205832 for nintedanib capsules (drug name OFEV), sponsored by Boehringer Ingelheim, for the treatment of systemic sclerosis-associated interstitial lung disease (SSc-ILD). The focus of the discussion will be whether the application provides substantial evidence of efficacy for the proposed indication.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is

available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 2, 2019. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 3, 2019.

Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Yinghua Wang (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–12559 Filed 6–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Solicitation of Nominations for Membership To Serve on the National Advisory Council on Migrant Health

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Request for nominations.

SUMMARY: HRSA is seeking nominations of qualified candidates to be considered for appointment as members of the National Advisory Council on Migrant Health (NACMH/Council). The NACMH consults with and makes recommendations to the HHS Secretary concerning the organization, operation, selection, and funding of migrant health centers (MHC) and other entities, under grants and contracts under the Public Health Service (PHS) Act. HRSA is seeking nominations to fill up to five positions on the NACMH with individuals served by nominating health centers.

DATES: HRSA will receive written nominations for NACMH membership on a continuous basis.

ADDRESSES: Nomination packages must be submitted in hardcopy to the Designated Federal Official (DFO), NACMH, Strategic Initiatives and Planning Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 16N38B, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: All requests for information regarding NACMH nominations should be sent to Esther Paul, DFO, NACMH, HRSA, in one of three ways: (1) Send a request to the following address: Esther Paul, Strategic Initiatives and Planning Division, Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, 16N38B, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call 301–594–4300; or (3) send an email to *epaul@hrsa.gov.* A copy of the NACMH charter and list of the current membership are available on the NACMH website at *https://bphc.hrsa.gov/qualityimprovement/strategicpartnerships/nacmh/index.html.*

SUPPLEMENTARY INFORMATION: NACMH was established and authorized under section 217 of the PHS Act, as amended (42 U.S.C. 218), to consult with and make recommendations to the HHS Secretary concerning the organization, operation, selection, and funding of MHCs, and other entities under grants and contracts under section 330 of the PHS Act (42 U.S.C. 254b). The NACMH meets twice each calendar year, or at the discretion of the DFO in consultation with the NACMH Chair.

Authority: NACMH is authorized under section 217 of the PHS Act, as amended (42 U.S.C. 218), and established by the Secretary. The NACMH is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2) (FACA), which sets forth standards for the formation and use of advisory committees.

Nominations: HRSA requests nominations for voting members to serve as Special Government Employees (SGEs) on the NACMH. The nominations are to fill five open positions with MHC governing board members who are served by the nominating MHC and who are familiar with the delivery of health care to migratory and seasonal agricultural workers. The Secretary appoints NACMH members with the expertise needed to fulfill the duties of the Advisory Committee. The membership requirements set forth in section 217 of the PHS Act, as amended (42 U.S.C. 218), require that the Council consist of 15 members, at least 12 of whom shall be members of the governing boards of MHCs or other entities assisted under section 330 of the PHS Act (42 U.S.C. 254b). Of such 12 members, at least 9 shall be chosen from among those members served by such health centers and familiar with the delivery of health care to migratory and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs. New members filling a vacancy that occurred prior to the expiration of a term may serve only for the remainder of such term. Members may serve after the expiration of their terms until their successors have taken office, but no longer than 120 days. Nominees must reside in the United States, and international travel cannot be funded.

Individuals selected for appointment to NACMH will be invited to serve for up to 4 years as SGEs. Members appointed as SGEs receive a stipend and reimbursement for per diem and travel expenses incurred for attending NACMH meetings, as authorized by 5 U.S.C. 5703 of the FACA for persons employed intermittently in government service.

A complete nomination package should include the following information for each nominee: (1) A

NACMH nomination form; (2) three letters of reference; (3) a statement of prior service on the NACMH; and (4) a biographical sketch of the nominee or a copy of his/her curriculum vitae. Nomination packages may be submitted directly by the nominated individual or by the person/organization recommending the candidate.

HHS will endeavor to ensure NACMH membership is fairly balanced, representing points of view and individuals of diverse geographic areas, gender, and ethnic and minority groups, as well as individuals with disabilities. Appointments shall be made without discrimination based on age, ethnicity, gender, sexual orientation, or cultural, religious, or socioeconomic status.

Individuals selected to be considered for appointment will be required to provide detailed information regarding their financial holdings, consultancies, and research grants or contracts. Disclosure of this information is required in order for HRSA ethics officials to determine whether there are conflicts between the SGE's public duties as a member of the NACMH and their private interests, including an appearance of a loss of impartiality as defined by federal laws and regulations, and to identify any required remedial action needed to address the potential conflict(s).

Maria G. Button,

Director, Division of the Executive Secretariat.

[FR Doc. 2019–12592 Filed 6–13–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; System for the Spec. of Acute THC Imp. Using (1220).

Date: June 20, 2019.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, 301–827–5817, *mcguireso@mail.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Preparation and Distribution of Research Drug Products (8952).

Date: June 25, 2019.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Clinical Research Coordination Center (2249).

Date: July 16, 2019.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Lyle Furr, Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4227, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–9550, (301) 827–5702, *lf33c.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 10, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12525 Filed 6–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Translational Research Program (TRP) to Develop Novel Therapies and Devices for the Treatment of Visual System Disorders.

Date: July 15, 2019.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 6700 B Rockledge Dr., Ste 3400, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 10, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12526 Filed 6–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; SEP for NIDA Medications Development.

Date: June 25, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; Laboratories for Early Clinical Evaluation of Pharmacotherapies for Substance Use Disorders (UG1) Clinical Trials Required.

Date: June 25, 2019.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Ivan K. Navarro, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, Division of Extramural Research, National Institute on Drug Abuse, NIH, DHHS, 6001 Executive Boulevard, Room 4242, MSC 9550, Bethesda, MD 20892, 301–827–5833, *ivan.navarro@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: June 10, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12527 Filed 6–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Diversity Training T32.

Date: July 11, 2019.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301–827–7913, *creazzotl@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Mentored Career Development Awards—K23.

Date: July 15, 2019.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Emerging Investigator Award (EIA) (R35 Clinical Trial Optional).

Date: July 18, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892, 301–827–7913, *creazzotl@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Short-Term Research Education to Increase Diversity.

Date: July 19, 2019.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Michael P. Reilly, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892, 301–827–7975, *reillymp@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Ancillary Studies (R01).

Date: July 19, 2019.

Time: 8:30 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: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892, 301–827–7942, *lismerin@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathway to Independence in Blood Science (K99).

Date: July 31, 2019.

Time: 8:30 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: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892, *susan.sunnarborg@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 10, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–12528 Filed 6–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting for the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC)

AGENCY: Substance Abuse and Mental Health Services Administration, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (Secretary) announces a meeting of the Interdepartmental Serious Mental Illness Coordinating Committee (ISMICC).

The ISMICC is open to the public and members of the public can attend the

meeting via telephone or webcast only, and not in person.

DATES: July 2, 2019/9:00 a.m.–2:30 p.m. (EDT)/OPEN.

ADDRESSES: The meeting will be held (virtually) at SAMHSA Headquarters, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting can be accessed via webcast at: *https://protect2.fireeye.com/url?k=a21c7e81-fe4857aa-a21c4fbe-0cc47a6d17cc-ad7b9f7b669ad5be&u=https://www.mymeetings.com/nc/join.php?i=PWXW9134696&p=1858202&t=c,* or by joining the teleconference at the toll-free, dial-in number at 888–928–9713; passcode 1858202.

FOR FURTHER INFORMATION CONTACT: Pamela Foote, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, 14E53C, Rockville, MD 20857; telephone: 240–276–1279; email: *pamela.foote@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The ISMICC was established on March 15, 2017, in accordance with section 6031 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to report to the Secretary, Congress, and any other relevant federal department or agency on advances in serious mental illness (SMI) and serious emotional disturbance (SED), research related to the prevention of, diagnosis of, intervention in, and treatment and recovery of SMIs, SEDs, and advances in access to services and support for adults with SMI or children with SED. In addition, the ISMICC will evaluate the effect federal programs related to serious mental illness have on public health, including public health outcomes such as (A) rates of suicide, suicide attempts, incidence and prevalence of SMIs, SEDs, and substance use disorders, overdose, overdose deaths, emergency hospitalizations, emergency room boarding, preventable emergency room visits, interaction with the criminal justice system, homelessness, and unemployment; (B) increased rates of employment and enrollment in educational and vocational programs; (C) quality of mental and substance use disorders treatment services; or (D) any other criteria as may be determined by the Secretary. Finally, the ISMICC will make specific recommendations for actions that agencies can take to better coordinate the administration of mental health services for adults with SMI or children with SED. Not later than one (1) year after the date of enactment of the 21st Century Cures Act, and five (5) years after such date of enactment, the ISMICC shall submit a report to Congress and any other relevant federal department or agency.

II. Membership

This ISMICC consists of federal members listed below or their designees, and non-federal public members.

Federal Membership: Members include, The Secretary of Health and Human Services; The Assistant Secretary for Mental Health and Substance Use; The Attorney General; The Secretary of the Department of Veterans Affairs; The Secretary of the Department of Defense; The Secretary of the Department of Housing and Urban Development; The Secretary of the Department of Education; The Secretary of the Department of Labor; The Administrator of the Centers for Medicare and Medicaid Services; and The Commissioner of the Social Security Administration.

Non-federal Membership: Members include, 14 non-federal public members appointed by the Secretary, representing psychologists, psychiatrists, social workers, peer support specialists, and other providers, patients, family of patients, law enforcement, the judiciary, and leading research, advocacy, or service organizations. The ISMICC is required to meet at least twice per year.

Call-in information will be posted on the SAMHSA website: *https://www.samhsa.gov/about-us/advisory-councils/meetings* prior to the meeting. To attend virtually, submit written or brief oral comments, or request special accommodation for persons with disabilities, register on-line at: *http://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with the ISMICC Designated Federal Officer, Pamela Foote (see contact information in **FOR FURTHER INFORMATION CONTACT**). The meeting will include information on federal efforts related to serious mental illness (SMI) and serious emotional disturbance (SED), including Crisis Services Discussion, Schizophrenia and Related Disorders Alliance of America, the National Institute of Mental Health Strategic Plan, and updates on the following focus areas: Data, Access, Treatment and Recovery, Justice, and Finance.

The public comment section is scheduled for 11:15 a.m. Eastern Daylight Time (EDT), and individuals interested in submitting a comment, must notify the Designated Federal Official, Ms. Pamela Foote, on or before June 21, 2019 via email to: *Pamela.Foote@samhsa.hhs.gov.*

Two minutes will be allotted for each approved public comment as time permits. Written comments received in advance of the meeting will be included in the official record of the meeting.

Substantive meeting information and a roster of Committee members is available at the Committee's website: *https://www.samhsa.gov/about-us/advisory-councils/meetings.*

May 29, 2019.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2019–11484 Filed 6–13–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0124]

Agency Information Collection Activities: Cargo Container and Road Vehicle for Transport Under Customs Seal

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than July 15, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor,

Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 8734) on March 11, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Cargo Container and Road Vehicle for Transport under Customs Seal.

OMB Number: 1651–0124.

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: The United States is a signatory to several international Customs conventions and is responsible for specifying the technical requirements that containers and road vehicles must meet to be acceptable for transport under Customs seal. Customs and Border Protection (CBP) has the responsibility of collecting information for the purpose of certifying containers and vehicles for international transport under Customs seal. A certification of compliance facilitates the movement of containers and road vehicles across international territories. The procedures for obtaining a certification of a container or vehicle are set forth in 19 CFR part 115.

Estimated Number of Respondents: 25.

Estimated Number of Annual Responses per Respondent: 120.

Estimated Number of Total Annual Responses: 3,000.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

Dated: June 11, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–12620 Filed 6–13–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0017]

Agency Information Collection Activities: Protest

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted no later than July 15, 2019 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (84 FR 6016) on February 25, 2019, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request

for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Protest.
OMB Number: 1651–0017.
Form Number: CBP Form 19.
Current Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.
Type of Review: Extension (without change).
Affected Public: Businesses.
Abstract: CBP Form 19, *Protest,* is filed to seek the review of a decision of an appropriate CBP officer. This review may be conducted by a CBP officer who participated directly in the underlying decision. This form is also used to request ''Further Review,'' which means a request for review of the protest to be performed by a CBP officer who did not participate directly in the protested decision, or by the Commissioner, or his designee as provided in the CBP regulations.

The matters that may be protested include: The appraised value of merchandise; the classification and rate and amount of duties chargeable; all charges within the jurisdiction of the U.S. Department of Homeland Security; exclusion of merchandise from entry or delivery, or demand for redelivery; the liquidation or reliquidation of an entry; and the refusal to pay a claim for drawback.

The parties who may file a protest or application for further review include: The importer or consignee shown on the entry papers, or their sureties; any person paying any charge or exaction; any person seeking entry or delivery, or upon whom a demand for redelivery has been made; any person filing a claim for drawback; or any authorized agent of any of the persons described above.

CBP Form 19 collects information such as the name and address of the protesting party, information about the entry, detailed reasons for the protest, and justification for applying for further review.

The information collected on CBP Form 19 is authorized by Sections 514 and 514(a) of the Tariff Act of 1930 and provided for by 19 CFR part 174. This form is accessible at *https://www.cbp.gov/newsroom/publications/forms?title=19.*

Estimated Number of Respondents: 3,750.
Estimated Number of Responses per Respondent: 12.
Estimated Number of Total Annual Responses: 45,000.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 45,000.

Dated: June 11, 2019.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2019–12612 Filed 6–13–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2018–0001]

Surface Transportation Security Advisory Committee (STSAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; notice of Federal Advisory Committee meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Surface Transportation Security Advisory Committee (STSAC) to discuss issues listed in the Meeting Agenda section below. This meeting will be open to the public as stated in the Summary section below.

DATES: The Committee will meet on Thursday, July 11, 2019, from 8 a.m. to 1 p.m. This meeting may end early if all business is completed.

ADDRESSES: The meeting will be held at TSA Headquarters, 601 12th Street South, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Henry Budhram Jr., Surface Transportation Security Advisory Committee, Designated Federal Officer, Transportation Security Administration (TSA–28), 601 South 12th Street, Arlington, VA 20598–6028, *STSAC@tsa.dhs.gov,* 571–227–4268.

SUPPLEMENTARY INFORMATION:

Summary

Notice of this meeting is given in accordance with the provisions of sec. 1969, Division K, TSA Modernization Act, of the FAA Modernization Act of 2018 (Pub. L. 115–254, 132 Stat. 3186, Oct. 5, 2018). The STSAC will advise, consult with, report to, and make recommendations to the Administrator on surface transportation security matters, including the development, refinement, and implementation of policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security. The STSAC will also consider risk-based security approaches in the performance of its duties. Provisions of sec. 1969 stipulate that this Committee is exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

The meeting will be open to the public and will focus on items listed in the Meeting Agenda section below. Members of the public must register in advance with their full name, social security number, and date of birth to attend. This information will be used to conduct screening checks of visitors accessing Department of Homeland Security (DHS) facilities. Due to space constraints, the meeting is limited to 75 people, including STSAC members and staff. Public attendees will be admitted on a first to register basis. Attendees will be required to present a government-issued photo identification to verify identity at the time of entry.

In addition, members of the public must make advance arrangements, as stated below, to present oral or written statements specifically addressing issues pertaining to the items listed in the Meeting Agenda section below. The public comment period will begin at approximately 12 p.m., depending on the meeting progress. Speakers are requested to limit their comments to three minutes. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above, no later than June 30, 2019, to obtain instructions for registering to attend the meeting and/or to present oral or written statements addressing issues pertaining to the items listed in the Meeting Agenda section below. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Meeting Agenda

The Committee will meet to discuss items listed in the agenda below:

- Opening Statements
- Unclassified Surface Transportation Intelligence Briefing
- TSA Organizational Structure
- Surface Transportation Rulemaking
- Organization of STSAC
- Public Comments
- Closing Statements
- Adjournment

Dated: June 10, 2019.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement (PPE).

[FR Doc. 2019–12579 Filed 6–13–19; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2019–N020; FXES11140900000–190–FF09E33000]

Notice of Intent To Prepare Environmental Impact Statements; Withdrawal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of withdrawal.

SUMMARY: We, the U.S. Fish and Wildlife Service, are issuing this **Federal Register** notice to advise Federal, State, and local government agencies and the public that we are withdrawing 12 notices of intent to prepare draft environmental impact statements. These projects have been cancelled or no longer include Federal actions requiring analysis per the National Environmental Policy Act.

DATES: The notices of intent are withdrawn as of June 14, 2019.

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, Chief, Division of Environmental Review, at *Craig_Aubrey@fws.gov* or 703–358–2442. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), published 12 notices of intent (NOIs) in the **Federal Register** to prepare environmental impact statements (EISs) in accordance with the Endangered Species Act of 1973, as amended (ESA; 15 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), to analyze the impacts on the human environment of the proposed actions listed below. These projects have been cancelled or no longer include Federal actions. Details of the proposed actions are included within the originally published notices of intent, which can be found by using the publication dates, citations, and links in the table below.

Original **Federal Register** notice publication date	**Federal Register** publication citation and direct link	**Federal Register** notice subject and original agency docket number
10/4/2006	71 FR 62251—*https://www.federalregister.gov/documents/2006/10/24/06-8860/notice-of-intent-to-conduct-public-scoping-and-to-prepare-an-environmental-impact-statement-related*.	Notice of Intent to Conduct Public Scoping and Prepare an Environmental Impact Statement Related to the Washington Department of Natural Resources Aquatic Lands Habitat Conservation Plan [I.D. 092706C].
5/28/2010	75 FR 30057—*https://www.federalregister.gov/documents/2010/05/28/2010-12906/proposed-issuance-of-an-incidental-take-permit-to-energy-northwest-for-construction-and-operation-of*.	Notice of Intent to Conduct 30-day Public Scoping Period and Prepare an Environmental Impact Statement; Proposed Issuance of an Incidental Take Permit to Energy Northwest for Construction and Operation of the Radar Ridge Wind Project LLC [FWS–R1–ES–2010–N098].
10/01/2010	75 FR 60735—*https://www.federalregister.gov/documents/2010/10/01/2010-24692/proposed-issuance-of-incidental-take-permits-to-the-washington-department-of-fish-and-wildlife-for*.	Notice of Intent to Conduct a 30-day Public Scoping Period and Prepare an Environmental Impact Statement; Proposed Issuance of Incidental Take Permits to the Washington Department of Fish and Wildlife for State of Washington Wildlife Areas [RIN 0648–XY95].
12/16/2011	76 FR 78309—*https://www.federalregister.gov/documents/2011/12/16/2011-32222/hawaiian-and-pacific-islands-national-wildlife-refuge-complex-wilderness-review-and-legislative*.	Notice of Intent; Request for Comments; Hawaiian and Pacific Islands National Wildlife Refuge Complex; Wilderness Review and Legislative Environmental Impact Statement [FWS–R1–R–2011–N091].
2/10/2012	77 FR 7172—*https://www.federalregister.gov/documents/2012/02/10/2012-3107/sequoyah-national-wildlife-refuge-sequoyah-muskogee-and-haskell-counties-ok-comprehensive*.	Notice of Intent; Request for Comments; Sequoyah National Wildlife Refuge, Sequoyah, Muskogee, and Haskell Counties, OK; Comprehensive Conservation Plan and Environmental Impact Statement [FWS–R2–R–2011–N179].
2/1/2013	78 FR 7445—*https://www.federalregister.gov/documents/2013/02/01/2013-02256/notice-of-intent-to-prepare-a-draft-environmental-impact-statement-for-a-general-conservation-plan*.	Notice of Intent to Prepare a Draft Environmental Impact Statement for a General Conservation Plan for the American Burying Beetle for Pipelines and Well Field Development in Oklahoma and Texas [FWS–R2–ES–2012–N271].
2/7/2014	79 FR 7472—*https://www.federalregister.gov/documents/2014/02/07/2014-02637/notice-of-intent-to-prepare-an-environmental-impact-statement-for-a-habitat-conservation-plan-for*.	Notice of Intent to Prepare an Environmental Impact Statement for a Habitat Conservation Plan for Commercial Developments, Including Energy Developments, and Agricultural and Conservation Activities Within Six States [Docket No. FWS–R2–ES–2013–0134].
12/15/2014	79 FR 74107—*https://www.federalregister.gov/documents/2014/12/15/2014-29255/proposed-habitat-conservation-plannatural-community-conservation-plan-for-the-counties-of-yuba-and*.	Notice of Intent; Notice of Public Scoping Meeting; Request for Comments; Proposed Habitat Conservation Plan/Natural Community Conservation Plan for the Counties of Yuba and Sutter, CA; Scoping for Environmental Impact Statement [FWS–R8–ES–2014–N209].
6/12/2015	80 FR 33537—*https://www.federalregister.gov/documents/2015/06/12/2015-14408/draft-environmental-impact-statement-for-the-proposed-midwest-wind-energy-multi-species-habitat*.	Notice of Intent to Prepare an Environmental Impact Statement; Notice of Scoping Meeting and Request for Comments; Draft Environmental Impact Statement for the Proposed Midwest Wind Energy Multi-Species Habitat Conservation Plan [Docket No. FWS–R3–ES–2015–0033].
6/30/2015	80 FR 37286—*https://www.federalregister.gov/documents/2015/06/30/2015-16152/notice-of-intent-to-prepare-a-programmatic-draft-environmental-impact-statement-for-invasive-rodent*.	Notice of Intent to Prepare a Programmatic Environmental Impact Statement for Invasive Rodent and Mongoose Control and Eradication on U.S. Pacific Islands Within the National Wildlife Refuge System and in Native Ecosystems in Hawaii [FWS–R1–ES–2015–0026].
6/20/2016	81 FR 39949—*https://www.federalregister.gov/documents/2016/06/20/2016-14565/south-bay-salt-pond-restoration-project-phase-2-at-the-eden-landing-ecological-reserve-intent-to*.	Notice of Intent; Announcement of Meeting; Request for Public Comments; South Bay Salt Pond Restoration Project, Phase 2 at the Eden Landing Ecological Reserve; Intent to Prepare an Environmental Impact Statement/Environmental Impact Report [FWS–R8–R–2016–N061].

Original **Federal Register** notice publication date	**Federal Register** publication citation and direct link	**Federal Register** notice subject and original agency docket number
7/13/2016	81 FR 45296—*https://www.federalregister.gov/documents/2016/07/13/2016-16543/mandtllano-seco-fish-screen-facility-long-term-protection-project-notice-of-intent-for-environmental.*	Notice of Intent; Notice of Public Scoping Meetings; Request for Comments; M&T/Llano Seco Fish Screen Facility Long-Term Protection Project; Notice of Intent for Environmental Impact Statement [FWS–R8–R–2016–N096].

Authorities

We provide this notice in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations set forth by the Council on Environmental Quality (40 CFR 1500 *et seq.*), the Department of Interior's NEPA implementing regulations (43 CFR part 46) and other appropriate Federal laws, namely the requirements of section 10 of the ESA, regulations, and administrative materials.

Dated: May 3, 2019.

Gary Frazer,

Assistant Director for Ecological Services.

[FR Doc. 2019–12627 Filed 6–13–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX19LR000F60100; OMB Control Number 1028–0065]

Agency Information Collection Activities; Production Estimate

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before August 13, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive, MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0065 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at (703) 648–7720.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the ''Mineral Commodity Summaries,'' the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Title of Collection: Production Estimate.

OMB Control Number: 1028–0065.

Form Numbers: USGS Forms 9–4042–A and 9–4124–A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers.

Total Estimated Number of Annual Respondents: 1,198.

Total Estimated Number of Annual Responses: 1,198.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 299.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: There are no ''non-hour cost'' burdens associated with this IC.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), and the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Michael Magyar,

Associate Director, National Minerals Information Center.

[FR Doc. 2019–12624 Filed 6–13–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVW03500.L51050000. EA0000.LVRCF1705210. 17XMO#4500134682]

Notice of Availability of the Final Environmental Impact Statement for the Black Rock City LLC's Burning Man Special Recreation Permit Renewal in Pershing County, Nevada

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Black Rock Field Office, Winnemucca, Nevada has prepared a Final Environmental Impact Statement (EIS) and by this notice is announcing its availability. The BLM is the lead agency in development of the Final EIS and will be evaluating Black Rock City LLC's (BRC) request for a 10-year Special Recreation Permit (SRP) for the Burning Man Event in Pershing County, Nevada.

DATES: The BLM will not issue its Record of Decision for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The Final EIS can be downloaded from the BLM website at: *https://go.usa.gov/xEmSY*.

FOR FURTHER INFORMATION CONTACT: For questions about the proposed SRP renewal, contact Chelsea McKinney, Burning Man Project Manager, telephone: (775) 623–1500, address: 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

SUPPLEMENTARY INFORMATION: The applicant, BRC, has applied for a 10-year SRP under 43 CFR 2930 *et seq.* and has submitted a proposal to conduct the Burning Man event on public lands administered by the BLM Black Rock Field Office. BRC's proposal includes the following:

- Population increase to permit up to 100,000 total persons at the event;
- Expansion of the BLM Closure Order boundary by 561 acres, to a total of 14,714 acres;
- Creation of alternative transportation (Burner Express Bus/ Burner Express Air);
- Expansion of the perimeter fence to 10.4 miles total length;
- Arrival of as many as 30,000 staff and builders one week prior to opening;
- Expansion of Black Rock City to 1,250 acres;
- Installation of additional interactive camps;
- Installation of additional large scale art pieces;
- BRC licensing of art cars and ADA compliant vehicles to drive on the playa during event week;
- Use of approximately 16.5 million gallons of water per year would be obtained from private groundwater wells, located at Fly Ranch owned by BRC, for dust abatement and in support of event activities; and
- BRC management of vendor and compliance monitoring.

The Final EIS describes and analyzes the proposed Project's direct, indirect, and cumulative impacts on all affected resources. In addition to the Proposed Action (Alternative A), the following alternatives are also analyzed in the document: The Reduced Population Alternative with a population of 50,000 participants (Alternative B); the Alternate Site Alternative that moves the Event northeast of the current location (Alternative C); the No Population Change Alternative (Alternative D) would keep the population as it was in 2017 and 2018 at 80,000 participants; and the No Permit Alternative (Alternative E).

In December 2017, pre-scoping meetings were held in northern Nevada in Gerlach, Lovelock, and Reno. During those meetings the public was invited to submit comments regarding BRC's SRP renewal. During the pre-scoping comment period, the BLM received 77 comment letters.

On June 20, 2018, an initial Notice of Intent (NOI) was published in the **Federal Register** inviting scoping comments on the Proposed Action. The BLM received 327 scoping comment letters during the 45-day public scoping period. Concerns raised included impacts to air quality, cultural resources, environmental justice, transportation, Native American religious concerns, recreation, visual resources including Night Skies, wastes and materials (hazardous and solid), water resources, vegetation, wildlife, and Public Health and Safety.

On March 15, 2019, a Notice of Availability (NOA) was published in the **Federal Register** inviting comments on the Draft Environmental Impact Statement (EIS). The BLM received 2,016 submissions during the 45-day public comment period, with a total of 1,736 substantive comments. The Final EIS was edited in response to some of these substantive comments. Responses to all comments are located in Appendix K of the Final EIS.

The BLM has utilized and coordinated the NEPA scoping and comment process to help fulfill the public involvement requirements under the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3)—and continues to do so.

The information about historic and cultural resources within the area potentially affected by the proposed Project has assisted the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM has consulted and will continue to consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts to Indian trust assets and potential impacts to cultural resources have been analyzed in the Final EIS.

Authority: 40 CFR 1501.7

Mark E. Hall,

Field Manager, Black Rock Field Office.

[FR Doc. 2019–12629 Filed 6–13–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE02000–L5110.0000–GN.0000–LV.EM.F1503680–15X; MO# 4500133725]

Notice of Availability of the Final Environmental Impact Statement for the Rossi Mine Expansion Project, Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Rossi Mine Expansion Project and by this notice is announcing its availability.

DATES: The Final EIS will be available for a 30-day review period following the date the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**. The BLM will not issue a final decision on the proposal for a minimum of 30 days from the date that the EPA publishes its notice in the **Federal Register**.

ADDRESSES: Copies of the Final EIS for the Rossi Mine Expansion Project are available for public review and can be

obtained at the BLM Elko District Office, located at 3900 East Idaho Street, Elko Nevada 89801, and at the BLM's NEPA eplanning website at *https://go.usa.gov/xnRCr* or through eplanning on the BLM's website at *http://www.blm.gov/nv*.

FOR FURTHER INFORMATION CONTACT: Janice Stadelman, Project Manager, at telephone 775–753–0346; address 3900 East Idaho Street, Elko, Nevada 89801; email: *blm_nv_eldo_rossimine_project_eis@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Stadelman during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Final EIS is an abbreviated document that presents updates to the Draft EIS resulting from public and cooperating agency comments received during the 45-day public comment period. Public comments resulted in the addition of clarifying text, but did not significantly change the analysis. None of the public comments received resulted in major changes or revisions to the Draft EIS. Therefore, this abbreviated Final EIS must be read in conjunction with the Draft EIS (September 2018), which is also located on BLM's eplanning site at *https://go.usa.gov/xnRCr*.

The EIS analyzed the proposed modification submitted by Halliburton Energy Services to their plan of operations for the Rossi Mine Project. The proposal includes the continuation of the existing mine infrastructure, but would expand the existing facilities and operation to support the continuation of the open pit mining operation and surface exploration activities for barite. The proposed action would increase the disturbance to approximately a total acreage of 2,063 acres of public and private land, including 896 acres of previously approved or existing disturbance and 1,167 acres of new land disturbance. Of the 2,063 acres of surface disturbance, approximately 209 acres consist of private land and the remaining 1,854 acres are public land administered by the BLM. The proposed expansion would provide up to an estimated 433 jobs, some of which could be filled by returning and new employees.

The proposed action includes the expansion of the existing plan of operations boundary, the expansion of the existing open pits, the development of new open pits, expansion of the existing waste rock disposal facilities, construction of new waste rock disposal facilities, expansion or modification of ancillary facilities, expansion and development of new roads, re-alignment of segments of the Boulder Valley Road and Antelope-Boulder Connector Road, installation of new power distribution lines, the continuation of surface exploration, and reclamation activities. The proposed expansion is projected to add 8 years to the mine's life. The Project is located on the northern end of the Carlin Trend in Elko County, approximately 25 miles north of the community of Dunphy and 28 aerial miles northwest of the town of Carlin, Nevada.

The Notice of Availability of the Draft EIS for the Rossi Mine Expansion Project published on September 14, 2018 (83 FR 46753), with a 45-day comment period. The BLM issued a news release and held two public meetings during the comment period. A total of nine people signed the attendance sheets available at the meetings. Those attending the public meetings consisted of representatives from the BLM, Halliburton, and the Nevada Department of Wildlife, and four members from the general public. The BLM received a total of eight comment submittals (*e.g.* letter, comment form, email) during the comment period. Key issues identified by individuals, groups, and government entities include potential impacts and mitigation for sage-grouse and mule deer habitat; impacts, mitigation and monitoring related to groundwater; direct, cumulative and socioeconomic impacts to livestock grazing management; maintenance of the access road; minimizing night lighting impacts; complying with State regulations and permitting with the State agencies regarding air and water; and support for the project.

The BLM is the lead Federal agency for this EIS. Cooperating agencies included the Nevada Department of Wildlife, the Nevada Department of Conservation and Natural Resources Sagebrush Ecosystem Technical Team, the U.S. Fish and Wildlife Service, the Elko County Board of Commissioners, and the EPA. The agency-preferred alternative is the Reconfiguration Alternative, which consists of the Proposed Action and the reconfiguration of the waste rock disposal facilities.

Following a 30-day Final EIS availability and review period, a Record of Decision (ROD) will be issued. The decision reached in the ROD is subject to appeal to the Interior Board of Land Appeals. The 30-day appeal period begins with the issuance of the ROD.

(*Authority:* 40 CFR 1506.6, 40 CFR 1506.10)

Jill C. Silvey,

District Manager, Elko District Office.

[FR Doc. 2019–12628 Filed 6–13–19; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0027980, PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to Effigy Mounds National Monument. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Effigy Mounds National Monument at the address in this notice by July 15, 2019.

ADDRESSES: Jim Nepstad, Superintendent, Effigy Mounds National Monument, 151 Hwy. 76, Harpers Ferry, IA 52146, telephone (563) 873–3491 Ext. 101, email *jim_nepstad@nps.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and

Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of the Interior, National Park Service, Effigy Mounds National Monument, Harpers Ferry, IA. The human remains and associated funerary objects were removed from sites in Allamakee and Clayton Counties, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the Superintendent, Effigy Mounds National Monument.

Consultation

A detailed assessment of the human remains was made by Effigy Mounds National Monument professional staff in consultation with representatives of the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota (hereafter referred to as ''The Tribes'').

History and Description of the Remains

The human remains described below, with the exception of one metatarsal fragment from the Great Bear Mound Group originally misidentified as a bone tool, were stolen from Effigy Mounds National Monument in 1990 and recovered in 2011 and 2012. After examination by an osteologist, most, but not all, of the remains were able to be matched with their original documentation. The recovered remains which were not able to be matched were cataloged as a separate accession (#212) and are accounted for in the total minimum number of individuals in Effigy Mounds National Monument collections. These fragmentary remains will not be described separately in this notice or any future notice. Items found with the stolen remains that could not be reunited with their original accession are described here as cultural items removed at unknown dates from unknown sites within the boundaries of Effigy Mounds National Monument.

Because the mounds at Effigy Mounds National Monument are burial mounds, all artifacts that come from these mounds are considered funerary objects. All of the funerary objects are considered associated funerary objects because, even though these types of items likely had other uses within the culture, it is reasonable to believe that these specific funerary objects were made exclusively for burial purposes and therefore pursuant to 25 U.S.C. 3001(3)(A) are associated funerary objects regardless of the location of the connected human remains.

At an unknown date, human remains representing, at minimum, one individual, were removed from an unknown site likely within the boundaries of Effigy Mounds National Monument in Allamakee or Clayton County, IA. No known individuals were identified. No associated funerary objects are present.

At unknown dates, 59 cultural items were removed from unknown sites within the boundaries of Effigy Mounds National Monument in Allamakee or Clayton County, IA. The 59 associated funerary objects are 55 animal bones, one unfired clay fragment, and three stones.

In 1928, human remains representing, at minimum, three individuals, were removed from Fire Point Mound Group, Allamakee County, IA, by local collector Henry P. Field, who donated the material to Effigy Mounds National Monument in 1958. No known individuals were identified. The 22 associated funerary objects are one miniature pot, one ground stone tool, one iron concretion, one modified hematite slab, one galena crystal, one maul, one drill, four stones, two pottery sherds, two utilized flakes, four flakes, one flake fragment, one flake tool, and one biface.

In 1952, 51 cultural items were removed from Sny Magill Mound Group in Clayton County, IA, by NPS archeologist Paul Beaubien during work to determine if the site should be added to the monument. The 51 associated funerary objects are three ground stone tools, four pieces of shatter, six unmodified rocks, one piece of fire cracked rock, seven flakes, and 30 pottery sherds.

In 1952, 38 cultural items were removed from the Nazekaw Terrace Mound Group in Allamakee County, IA, by NPS archeologist Paul Beaubien. The human remains were given to an outside researcher in 1952, returned to Effigy Mounds National Monument in 2000, and repatriated in 2005. The 38 associated funerary objects are 14 flakes, five pieces of shatter, 16 unmodified rocks, two faunal bones, and one bag of vegetal material.

In 1957, 46 cultural items were removed from the Devils Den Mound Group on private property in Clayton County, IA, by NPS archeologist Robert Bray. The landowner donated the items to Effigy Mounds National Monument along with a bundle burial which was repatriated in 2001. The 46 associated funerary objects are 42 pottery sherds, one scraper, one modified flake, and two unmodified rocks.

In 1959, human remains representing, at minimum, four individuals, were removed from Red House Landing Mound Group in Allamakee County, IA, by NPS archeologist John Ingmanson during a soil study by the Iowa State University Department of Agronomy. No known individuals were identified. The 62 associated funerary objects are one flake, one shell, five pieces of shatter, 52 unmodified rocks, two charcoal samples, and one soil sample.

In 1959, one cultural item was removed from the Nazekaw Terrace Mound Group by local collector Henry P. Field during construction of the Visitor Center parking lot and given to Effigy Mounds National Monument staff. The one associated funerary object is a piece of a copper breastplate.

In 1961, two cultural items were removed from the Marching Bear Mound Group in Clayton County, IA, by NPS archeologist John Ingmanson during the mound rehabilitation project. The two associated funerary objects are one projectile point and one charcoal sample.

In 1962, seven cultural items were removed from the Marching Bear Mound Group in Clayton County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. The seven associated funerary objects are two charcoal samples, one unmodified stone, two cores, and two flakes.

Between 1960 and 1963, one cultural item was removed from the Marching Bear Mound Group in Clayton County, IA, during the mound rehabilitation project. The one associated funerary object is a flake tool.

In 1962, 30 cultural items were removed from the Compound Mound Group in Clayton County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. Human remains from the site were repatriated

in 2008. The 30 associated funerary objects are seven flakes, 14 unmodified stones, and nine pieces of shatter.

In 1962, 38 cultural items were removed from the Marquette-Yellow River Mound Group 8 in Clayton County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. The 38 associated funerary objects are eight flakes, one piece of shatter, 28 unmodified rocks, and one burned earth sample.

In 1962, nine cultural items were removed from the Marquette-Yellow River Mound Group 6 in Clayton County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. The nine associated funerary objects are seven flakes, one piece of shatter, and one unmodified rock.

In 1965, human remains representing, at minimum, five individuals, were excavated from Fire Point Mound Group in Allamakee County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. No known individuals were identified. The 48 associated funerary objects are five flakes, one knife fragment, one galena crystal, seven pottery sherds, three pieces of shatter, 10 animal bones, 14 unmodified stones, six soil samples, and one burned earth sample.

In 1965, 106 cultural items were removed from Isolated Round Mound I in Allamakee County, IA, by NPS archeologist Garland Gordon during the mound rehabilitation project. The 106 associated funerary objects are 64 pottery sherds, 40 unmodified rocks, one flake, and one soil sample.

In 1967, one cultural item was removed from the Karnopp-Eggleston Mound Group in Crawford County, WI, by NPS archeologist Garland Gordon after permission was given by the landowner to surface collect a recently leveled mound. Gordon collected human remains and artifacts which were donated to Effigy Mounds National Monument. In 1987, the human remains were transferred to the Wisconsin Historical Society via the Iowa Office of the State Archaeologist under the authority of the 1976 Iowa Burial Law. In the 1970s, all but one of the artifacts were culled from the accession with no accompanying documentation. Their location is unknown. The one associated funerary object is one bifurcate base projectile point.

In 1971, human remains representing, at minimum, three individuals, were removed from Isolated Round Mound II in Allamakee County, IA, by NPS archeologist Wilfred Husted during legally authorized excavations. No known individuals were identified. The one associated funerary object is a soil sample.

In 1971, human remains representing, at minimum, one individual, were removed from the Great Bear Mound Group in Allamakee County, IA, by NPS archeologist Wilfred Husted during the mound rehabilitation project. No known individuals were identified. The one associated funerary object is a small stone celt.

Based on archeological context, ethnographic information, and oral traditions the human remains and associated funerary objects described above are identified as belonging to the Woodland tradition.

The Woodland tradition transitions into the Oneota tradition which is identified as being clearly ancestral to the Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; and Winnebago Tribe of Nebraska.

The First Treaty of Prairie Du Chien of August 19, 1825 between the United States and the Sac and Fox, Dakota Sioux, Ioway, Ho-Chunk, Winnebago, Potawatomi, Chippewa, Menominee, and Ottawa demonstrates the variety of tribes living in the area in the 1800s who have historic affiliation with Effigy Mounds National Monument.

The First Treaty of Prairie du Chien, as well as linguistic, oral tradition, temporal, and geographic evidence, reasonably indicates that the following Sioux Indian tribes possess ancestral ties to the Effigy Mounds National Monument region and the human remains and associated funerary objects described above: Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; and Yankton Sioux Tribe of South Dakota.

Determinations Made by Effigy Mounds National Monument

Officials of Effigy Mounds National Monument have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 17 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 523 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and to have been made exclusively for burial purposes or to contain human remains.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Jim Nepstad, Superintendent, Effigy Mounds National Monument, 151 Hwy. 76, Harpers Ferry, IA 52146, telephone (563) 873–3491 Ext. 101, email *jim_nepstad@nps.gov,* by July 15, 2019. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Omaha Tribe of Nebraska; Otoe-Missouria Tribe of Indians, Oklahoma; Ponca Tribe of Nebraska; Prairie Island Indian Community in the State of Minnesota; Santee Sioux Nation, Nebraska; Shakopee Mdewakanton Sioux Community of Minnesota; Sisseton-

Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Standing Rock Sioux Tribe of North & South Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and the Yankton Sioux Tribe of South Dakota may proceed.

Effigy Mounds National Monument is responsible for notifying The Tribes that this notice has been published.

Dated: May 17, 2019.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2019–12590 Filed 6–13–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1068]

Certain Microfluidic Devices; Notice of Request for Supplemental Submissions From the Parties and Interested Members of the Public and Interested Government Agencies; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (the ''Commission'') is requesting supplemental submissions from the parties and interested members of the public and interested government agencies. The target date in this investigation has been extended to August 15, 2019.

FOR FURTHER INFORMATION CONTACT: Ron Traud, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3427. 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 Information System (''EDIS'') (*https://edis.usitc.gov*). Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 6, 2017, the Commission instituted this investigation based on a complaint filed by Bio-Rad Laboratories, Inc. of Hercules, California (''Bio-Rad'') and Lawrence Livermore National Security, LLC of Livermore, California (collectively, ''Complainants''). 82 FR 42115 (Sept. 6, 2017). Complainants alleged a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), by 10X Genomics, Inc. of Pleasanton, California (''10X'') based on its importation into the United States of certain microfluidic devices asserted to infringe one or more claims of U.S. Patent Nos. 9,500,664; 9,636,682; 9,649,635; and 9,126,160. *Id.* The Office of Unfair Import Investigations was also named as a party in this investigation. *Id.* The Commission also directed the ALJ to take evidence and hear arguments regarding the public interest and provide the Commission with findings of fact and a recommended determination on the statutory public interest factors, as requested by 10X. *Id.*

On September 20, 2018, the presiding administrative law judge (''ALJ'') issued a final initial determination finding that 10X violated section 337 through its importation of its GEM–Q and GEM–U Chips (collectively, the ''GEM Chips''). However, the ALJ found no violation by 10X based on its importation of its Chip SE or Chip GB.

On September 28, 2018, the ALJ issued a recommended determination on remedy, bonding, and the public interest (the ''RD''). The ALJ recommended that, if the Commission finds a violation of section 337, it should issue a limited exclusion order (''LEO'') against infringing microfluidic devices, which are imported, sold for importation, and/or sold after importation by 10X. The LEO would prevent the importation by 10X of microfluidic devices that infringe Complainants' asserted patents. The ALJ further recommended that, if the Commission finds a violation of section 337, it should issue a cease and desist order (''CDO'') against 10X. The CDO would prevent the transfer by 10X to others of microfluidic devices that infringe Complainants' asserted patents. The ALJ found that ''the public interest factors weigh in favor of imposition of the recommended remedial orders.'' RD at 30.

On December 4, 2018, the Commission determined to review the ALJ's findings as to the GEM Chips, the Chip SE, and the Chip GB. 83 FR 63672 (Dec. 11, 2018). Accordingly, the Commission may find a section 337 violation and issue an LEO or CDO or both relating to any or all of those products. However, prior to issuing remedial orders, the Commission must consider the effect of those remedial orders on the public interest. 19 U.S.C. 1337(d)(1), (f)(1). Given the current record, the Commission is requesting additional information regarding the public interest from the parties, interested members of the public, and government agencies.

The parties, interested members of the public, and interested government agencies are requested to provide statements and comments on the following public interest issues. The Commission is particularly interested in responses that include detailed information regarding specific research projects being conducted in the United States as of the date of this Notice.

(1) For current research projects being conducted in the United States, please provide the following information:

a. Please quantify and explain what, if any, research setbacks (such as loss of time, money, samples, or usable data) would occur if the specific current research project(s) were required to be switched from 10X's GEM Chips to another system.

b. Please explain and quantify the extent to which the Chip SE could replace the GEM Chips in the current ongoing research project(s) discussed above.

c. To what extent would delaying the effect of any exclusion or cease and desist order covering 10X's GEM Chips ameliorate or prevent such setbacks for the specific research project(s)? How long of a delay in the effective date of a remedial order would be necessary to allow the specific ongoing research project(s) to continue to completion with 10X's GEM Chips?

(2) Are there research areas for which 10X's GEM Chips used with 10X's Chromium Controllers are the only acceptable research platform? If so, why are alternative products not acceptable?

(3) If the Commission were to tailor its remedial orders to allow researchers using the GEM Chips in the United States as of the date of this Notice to continue to receive the GEM Chips:

a. Please provide proposed remedial order language for a certification that would permit only imports for researchers who have a documented need to continue to receive the GEM Chips for a specific current research project that cannot be met by any alternative product, including the Chip SE.

b. Please explain how your proposed language for that exception allows the continued receipt of the GEM Chips by those U.S. researchers only for research

ongoing as of the date of this Notice and only until the completion of that research.

c. Please include examples of the types of documentation that you contend would support the requirements above, and which correspond to your proposed remedial order language.

(4) If the Commission were to tailor any remedial order to allow receipt of the GEM Chips by researchers in the United States who will begin research for which the GEM Chips are the only acceptable option to perform that research:

a. Please provide proposed remedial order language for a certification that would permit only imports for researchers who have a documented need to receive the GEM Chips for a specific research project that cannot be met by any alternative product, including the Chip SE.

b. Please explain how your proposed language for that exception allows the receipt of the GEM Chips only for such research and only until the completion of that research.

c. Please include examples of the types of documentation that you contend would support the requirements above, and which correspond to your proposed remedial order language.

(5) In its initial public interest submission to the Commission, 10X requested the Commission to delegate public interest to the ALJ to ''permit development of the evidentiary record to ensure that these public interest issues are properly addressed.'' 10X Sub. at 5 (Aug. 14, 2017). The parties are requested to respond to the following:

a. Why did the parties fail to develop the evidentiary record in the hearing before the ALJ to include specific information and statements from third-party researchers of the sort that were included in 10X's exhibits 7 and 8 in its January 30, 2019 Response to Written Submissions Pursuant to Commission's December 4, 2018 Notice?

b. How should Commission Rule 210.4(c)(1) apply to 10X's filing of its exhibits 7 and 8 and related argument in its January 30, 2019 Response to Written Submissions Pursuant to Commission's December 4, 2018 Notice?

c. If a sanction is warranted under Commission Rule 210.4(d), who should be sanctioned, what should that sanction be, and what procedure should be followed to impose such sanction, if any?

(6) 10X is requested to supply the following:

a. A list of current U.S. customers of its GEM Chips; the specific research project(s) being performed as of the date of this Notice by each customer; the amount of GEM Chips supplied to each U.S. customer per month; and the estimated date for the completion of the research project(s) using those chips.

b. An update on the timeline for availability of the Chip SE to its customers in commercial quantities.

The Commission has additionally determined to extend the target date in this investigation to August 15, 2019.

Written Submissions: The parties to the investigation are requested to file opening and reply written submissions on the issues identified in this Notice. The parties' opening written submissions must be filed no later than close of business on June 24, 2019. The parties' reply submissions must be filed no later than the close of business on July 1, 2019. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Interested members of the public and interested government agencies are also requested to file submissions to certain issues identified in this Notice. Members of the public and government agencies must file their statements and comments no later than the close of business on July 1, 2019.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1068'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000). Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 10, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–12549 Filed 6–13–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–626 and 731–TA–1452–1454 (Preliminary)]

Certain Collated Steel Staples From China, Korea, and Taiwan; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–626 and 731–TA–1452–1454 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain collated steel staples from China, Korea, and Taiwan, provided for in subheading 8305.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the

Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by July 22, 2019. The Commission's views must be transmitted to Commerce within five business days thereafter, or by July 29, 2019.

DATES: June 6, 2019.

FOR FURTHER INFORMATION CONTACT: Calvin Chang ((202) 205–3062), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on June 6, 2019, by Kyocera Senco Industrial Tools, Inc., Cincinnati, Ohio.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Thursday, June 27, 2019, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before June 25, 2019. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before July 2, 2019, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 10, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–12534 Filed 6–13–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1103]

Certain Digital Video Receivers and Related Hardware and Software Components; Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued an Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order and cease and desist orders. This notice is soliciting

public interest comments from the public only. Parties are to file public interest submissions pursuant to Commission rules.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov,* and 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: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

On June 4, 2019, the administrative law judge (''ALJ'') issued the Initial Determination on Violation of Section 337 and Recommended Determination on Remedy and Bond. The Recommended Determination recommends that the Commission issue a limited exclusion order as to the infringing set-top boxes, subject to a certification provision that would allow importation should Comcast implement the redesigns adjudicated not to infringe. The ALJ also recommended the issuance of cease and desist orders, and further recommended zero bond during the Presidential review period.

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, parties are to file public interest submissions pursuant to pursuant to 19 CFR 210.50(a)(4). In addition, members of the public are hereby invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination. Comments should address whether issuance of a limited exclusion order and cease and desist orders in this investigation directed to respondents' infringing products would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order and cease and desist orders would impact consumers in the United States.

Written submissions from the public must be filed no later than by close of business on July 8, 2019.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–1050'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: June 7, 2019.

By order of the Commission.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2019–12522 Filed 6–13–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Final)]

Fresh Tomatoes From Mexico; Resumption of the Final Phase of an Anti-Dumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the resumption of the final phase of antidumping investigation No. 731–TA–747 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of fresh tomatoes from Mexico preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less than fair value (''LTFV'').[1]

[1] For purposes of this investigation, Commerce has defined the subject merchandise as all fresh or chilled tomatoes (fresh tomatoes) which have Mexico as their origin, except for those tomatoes which are for processing. Processing is defined to include preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes that are imported for cutting up, not further processing (*e.g.,* tomatoes used in the preparation of fresh salsa or salad bars), are covered by the investigation.

Continued

DATES: May 7, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson ((202) 205–2542), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 1, 1996, the Commission instituted a preliminary antidumping investigation in response to a petition filed by the Florida Tomato Growers Exchange, Orlando, FL; Florida Fruit and Vegetable Association, Orlando, FL; Florida Farm Bureau Federation, Gainesville, FL; South Carolina Tomato Association, Inc., Charleston, SC; Gadsden County Tomato Growers Association, Inc., Quincy, FL; Accomack County Farm Bureau, Accomack, VA; Florida Tomato Exchange, Orlando, FL; Bob Crawford, Commissioner of Agriculture, Florida Department of Agriculture and Consumer Services, Tallahassee, FL; and the Ad Hoc Group of Florida, California, Georgia, Pennsylvania, South Carolina, Tennessee, and Virginia Tomato Growers (61 FR 15968, April 10, 1996). On May 16, 1996, the Commission notified Commerce of its affirmative preliminary injury determination (61 FR 28891, June 6, 1996). On October 28, 1996, Commerce preliminarily determined that imports of fresh tomatoes from Mexico were being sold at LTFV in the United States (61 FR 56608, November 1, 1996). Also on October 28, 1996, Commerce and certain growers/exporters of fresh tomatoes from Mexico signed a final suspension agreement (61 FR 56618, November 1, 1996). Accordingly, effective November 1, 1996, the Commission suspended its antidumping investigation (61 FR 58217, November 13, 1996).

On October 1, 2001, Commerce initiated and the Commission instituted their first five-year reviews to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would likely lead to a continuation or recurrence of material injury (66 FR 49926, 66 FR 49975). On July 30, 2002, Commerce terminated the suspension agreement and its first review and resumed its antidumping investigation (67 FR 50858, August 6, 2002). Accordingly, the Commission terminated its first review on July 30, 2002 (67 FR 53361, August 15, 2002) and resumed its antidumping investigation (67 FR 56854, September 5, 2002). On December 16, 2002, Commerce and the Commission suspended their resumed antidumping investigations when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico (67 FR 77044; 67 FR 78815, December 26, 2002).

On November 1, 2007, Commerce initiated and the Commission instituted their second five-year reviews of the suspended investigation (72 FR 61861, 72 FR 61905). Commerce terminated the suspension agreement and its second review and resumed its antidumping investigation, effective January 18, 2008 (73 FR 2887, January 16, 2008). The Commission consequently terminated its second review of the suspended investigation and resumed its antidumping investigation, effective January 18, 2008 (73 FR 5869, January 31, 2008). The antidumping investigation was suspended effective January 22, 2008, when Commerce signed a new suspension agreement with certain growers/exporters of fresh tomatoes from Mexico (73 FR 4831, January 28, 2008; 73 FR 7762, February 11, 2008).

On December 3, 2012, Commerce initiated and the Commission instituted their third five-year reviews of the suspended investigation (77 FR 71684, 77 FR 71629). On March 1, 2013, Commerce terminated the suspension agreement and its third review and resumed its antidumping investigation (78 FR 14771, March 7, 2013). On March 4, 2013, the Commission terminated its third review and resumed its antidumping investigation (78 FR 16529, March 15, 2013). Also on March 4, 2013, Commerce signed a new suspension agreement with certain grower/exporters of fresh tomatoes from Mexico and suspended its antidumping investigation (78 FR 14967, March 8, 2013). Effective March 4, 2013, the Commission suspended its antidumping investigation (78 FR 16529, March 15, 2013).

On February 1, 2018, Commerce initiated and the Commission instituted their fourth five-year reviews of the suspended investigation (83 FR 4641, 83 FR 4676). On May 7, 2019, Commerce terminated the suspension agreement and resumed its antidumping investigation (84 FR 20858, May 13, 2019). Effective May 7, 2019, the Commission terminated its fourth review (84 FR 21360, May 14, 2019) and has resumed its antidumping investigation.

A schedule for the final phase of this investigation will be issued at a later date.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: June 10, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–12535 Filed 6–13–19; 8:45 am]

BILLING CODE 7020–02–P

Commercially grown tomatoes, both for the fresh market and for processing, are classified as Lycopersicon esculentum. Important commercial varieties of fresh tomatoes include common round, cherry, grape, plum, greenhouse, and pear tomatoes, all of which are covered by this investigation.

Tomatoes imported from Mexico covered by this investigation are classified under the following subheading of the Harmonized Tariff Schedule of the United States (HTSUS), according to the season of importation: 0702. Although the HTSUS numbers are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Fresh Tomatoes from Mexico: Termination of Suspension Agreement, Rescission of Administrative Review, and Continuation of the Antidumping Duty Investigation. 84 FR 20858, 20860 May 13, 2019.

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Information Collection Activities; Comment Request

AGENCY: Bureau of Labor Statistics, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments

concerning the proposed revision of the ''Survey of Occupational Injuries and Illnesses.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 13, 2019.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for ''Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics.'' The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating state statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the Nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce measures of the rate of change. These data are used to assess the Nation's progress in improving the safety and health of America's work places; to prioritize scarce federal and state resources; to guide the development of injury and illness prevention strategies; and to support Occupational Safety and Health Administration (OSHA) and state safety and health standards and research. Data are essential for evaluating the effectiveness of federal and state programs for improving work place safety and health. For these reasons, it is necessary to provide estimates separately for participating states.

II. Current Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. The survey measures the overall rate of occurrence of work injuries and illnesses by industry for private industry, state governments, and local governments. For the more serious injuries and illnesses, those with days away from work (DAFW), the survey provides detailed information on the injured/ill worker (age, sex, race, industry, occupation, and length of service), the time in shift, and the circumstances of the injuries and illnesses classified by standardized codes (nature of the injury/illness, part of body affected, primary and secondary sources of the injury/illness, and the event or exposure which produced the injury/illness).

Beginning with the 2011 survey year, BLS began testing the collection of case and demographic data for injury and illness cases that require only days of job transfer or restriction (DJTR). The purpose of this on-going pilot study is to evaluate collection of these cases and to learn more about occupational injuries and illnesses that resulted in days of job transfer or work restriction.

For survey year 2019, case circumstance and worker characteristics for DJTR cases will be collected for the following six NAICS * industry subsectors in private industry:

Crop production (NAICS 111)

Transportation equipment manufacturing (NAICS 336)

Food and beverage stores (NAICS 445)

Truck transportation (NAICS 484)

Amusement, gambling, and recreation industries (NAICS 713)

Food services and drinking places (NAICS 722)

BLS anticipates that survey year 2019 will be the last for this pilot DJTR study, after which results will be assessed to determine how best to implement the collection of these data along with days away from work cases in future survey years. The BLS regards the collection of these DJTR cases as significant in its coverage of the American workforce.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Title of Collection: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Farms; State, Local or Tribal Governments.

RESPONDENT BURDEN ESTIMATES

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden hours
BLS 9300	232,400	Annually	232,400	23.8125	92,234
Pre-notification Package	* 86,200	Annually	86,200	71.5726	102,826
Totals	232,400	Annually	232,400		195,060

* (86,200 of the 232,400 respondents).

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 7th day of June 2019.

Mark Staniorski,

Chief, Division of Management Systems.

[FR Doc. 2019–12537 Filed 6–13–19; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding this information collection are best assured of having their full effect if received by July 15, 2019.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Presidential Awards for Excellence in Mathematics and Science Teaching (PAEMST): State Coordinators Questionnaire.

OMB Number: 3145–0241.

Overview of this Information Collection: The PAEMST is a White House program established by Congress in 1983 authorizing the President to bestow up to 108 awards each year to teachers of mathematics and science at the elementary and secondary levels. The NSF is the designated federal agency for administration of this Presidential program. Awards are given to mathematics and science (including computer science) teachers from each of the 50 states and four U.S. jurisdictions. The jurisdictions are Washington DC; Puerto Rico; Department of Defense Education Activity schools; and the U.S. territories as a group (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands). The award recognizes those teachers who develop and implement a high-quality instructional program that is informed by content knowledge and enhances student learning. Since the program's inception, more than 4,300 teachers have been recognized for their contributions in the classroom and to their profession. Awardees serve as models for their colleagues, inspiration to their communities, and leaders in the improvement of mathematics and science (including computer science) education.

The State Coordinator (SC) manages the PAEMST program within his or her state or jurisdiction. SCs recruit eligible nominees, select and assign mentors to nominees, coordinate the selection committee, and plan local recognition events within their State. They also carry out the responsibilities as noted in the ''Operational Handbook for State-Level Science and Mathematics Coordinators.''

The purpose of this survey is to seek feedback from the 120 SCs regarding PAEMST management within their state or jurisdiction. The NSF, PAEMST support team will ask directed questions using the survey to gather information that may specifically address the methods and recruitment efforts that SCs use to support the attracting of prospective award nominees. Additional survey areas may also include:

- Applicant Mentoring
- Mentor Training
- State selection Committee
- State selection Process
- Applicant and State Finalist Notification and Recognition
- In-kind contributions

The survey will evaluate the impact SCs have on attracting prospective award nominees to PAEMST. This will be conducted as a web-based survey.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30–40 minutes for State Coordinators.

Respondents: Individuals.

Estimated Number of Responses per Form: 120 Coordinators.

Estimated Total Annual Burden on Respondents: 80 hours (120 Coordinators at 40 minutes per survey = 80 hours).

Frequency of Response: One per application cycle.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the PAEMST functions, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Dated: June 10, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–12532 Filed 6–13–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0111]

Pre-Earthquake Planning, Shutdown, and Restart of a Nuclear Power Plant Following an Earthquake

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1337, ''Pre-Earthquake Planning, Shutdown and Restart of a Nuclear Power Plant Following an Earthquake.'' This proposed guide is a merger of two closely related guides, namely, regulatory guide (RG) 1.166, ''Pre-Earthquake Planning and Immediate Nuclear Power Operator Postearthquake Actions'' and RG 1.167 ''Restart of a Nuclear Power Plant Shutdown by a Seismic Event.'' Upon completion of the merger of the two guides, RG 1.167 will be withdrawn. DG–1337 incorporates lessons learned following shutdown and restart of nuclear power plants due to earthquake ground motion and post-earthquake evaluations since issuance of the two RGs in 1997.

DATES: Submit comments by August 13, 2019. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2019–0111. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

FOR FURTHER INFORMATION CONTACT: Vladmir Graizer, telephone: 301–415–0675, email: *Vladimir.Graizer@nrc.gov,* Thomas Weaver, telephone: 301–415–2823, email: *Thomas.Weaver@nrc.gov,* or Edward O'Donnell, telephone: 301–415–3317, email: *Edward.O'Donnell@nrc.gov.* All are staff members of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0111 when contacting the NRC about the availability of information regarding 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–2019–0111.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The DG–1337 is available in ADAMS under Accession No. ML18268A185.
- *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–2019–0111 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

The DG, titled, ''Pre-Earthquake Planning, Shutdown and Restart of a Nuclear Power Plant Following a Seismic Event,'' is a proposed revision of two related guides temporarily identified by its task number, DG–1337. The proposed guide merges RG 1.166, ''Pre-Earthquake Planning and Immediate Nuclear Power Operator Postearthquake Actions'' and RG 1.167 ''Restart of a Nuclear Power Plant Shutdown by a Seismic Event.''

The guide proposes guidance acceptable to the NRC staff regarding pre-earthquake planning actions, actions to determine the need to shutdown a nuclear power plant and the short-term and long-term processes, inspections and tests that are acceptable to demonstrate that a nuclear power plant is safe for restarting after a shutdown due to an earthquake. The merged guide incorporates lessons learned following shutdown and restart of nuclear power plants due to earthquake ground motion and post-earthquake evaluations since issuance of the two RGs in 1997. The proposed guide also endorses American National Standards Institute/American Nuclear Society (ANSI/ANS)–2.23–2016, ''Nuclear Power Plant Response to an Earthquake,'' and ANSI/ANS–2.10–2017, ''Criteria for Retrieval, Processing,

Handling, and Storage of Records from Nuclear Facility Seismic Instrumentation.''

III. Backfitting and Issue Finality

As discussed in the ''Implementation'' section of DG–1337, the NRC has no current intention to impose this draft regulatory guide on holders of current operating licenses or combined licenses. Accordingly, the issuance of this draft regulatory guide, if finalized, would not constitute ''backfitting'' as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.109(a)(1) of the Backfit Rule or be otherwise inconsistent with the applicable issue finality provisions in 10 CFR part 52.

This draft regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action would not constitute backfitting as defined in 10 CFR 50.109(a)(1) or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 10th day of June, 2019.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2019–12556 Filed 6–13–19; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86079; File No. SR–CboeEDGX–2019–036]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Through December 31, 2019, the Penny Pilot Program (''Penny Pilot'') in Options Classes in Certain Issues (''Pilot Program'') Previously Approved by the Commission

June 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (''Commission'') a proposal for the Cboe EDGX Options Market (''EDGX Options'') to extend through December 31, 2019, the Penny Pilot Program (''Penny Pilot'') in options classes in certain issues (''Pilot Program'') previously approved by the Commission. The text of the proposed rule change is below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 21.5. Minimum Increments

(a)–(c) (No changes).

Interpretations and Policies

.01 The Exchange will operate a pilot program set to expire on [June 30]*December 31,* 2019 to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Information Circulars distributed to Members and posted on the Exchange's website. The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day in the first month of each quarter.

* * * * *

The text of the proposed rule change is also available on the Exchange's website *http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program is scheduled to expire on June 30, 2019. The Exchange proposes to extend the Pilot Program until December 31, 2019. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange lastly represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program.

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on June 30, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–036. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–036 and should be submitted on or before July 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12546 Filed 6–13–19; 8:45 am]

BILLING CODE 8011–01–P

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Cancellation

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To Be Published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Monday, June 17, 2019 at 10:30 a.m.

CHANGES IN THE MEETING: The Closed Meeting scheduled for Monday, June 17, 2019 at 10:30 a.m., has been cancelled.

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 12, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–12775 Filed 6–12–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86076; File No. SR–CboeEDGX–2019–035]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Adopt Limit-on-Close (''LOC'') and Market-on-Close (''MOC'') Orders

June 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 6, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to adopt limit-on-close (''LOC'') and market-on-close (''MOC'') orders. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 2016, the Exchange's parent company, Cboe Global Markets, Inc. (''Cboe Global''), which is also the parent company of Cboe Exchange, Inc. (''Cboe Options'') and Cboe C2 Exchange, Inc. (''C2''), acquired the Exchange, Cboe EDGA Exchange, Inc. (''EDGA''), Cboe BZX Exchange, Inc. (''BZX or BZX Options''), and Cboe BYX Exchange, Inc. (''BYX'' and, together with the Exchange, C2, Cboe Options, EDGA, and BZX, the ''Cboe Affiliated Exchanges''). The Cboe Affiliated Exchanges are working to align certain system functionality, retaining only intended differences between the Cboe Affiliated Exchanges, in the context of a technology migration. Cboe Options intends to migrate its technology to the same trading platform used by the Exchange, C2 and BZX Options in the fourth quarter of 2019. The proposal set forth below is intended to add certain functionality to the Exchange's System that is available on Cboe Options in order to ultimately provide a consistent technology offering for market participants who interact with the Cboe Affiliated Exchanges.[5] Although the Exchange intentionally offers certain features that differ from those offered by its affiliates and will continue to do so, the Exchange believes that offering similar functionality to the extent practicable will reduce potential confusion for Users.

The Exchange proposes to adopt LOC and MOC orders under Rule 21.1(f). Proposed Rule 21.1(f)(7) defines an LOC order as a limit order, and proposed Rule 21.1(f)(8) defines a MOC order as a market order, respectively, that it may only execute on the Exchange no earlier than three minutes prior to Regular Trading Hours (''RTH'') market close. The System enters LOC and MOC orders into the Book in time sequence (based on the times at which the Exchange initially received them), where they may be processed in accordance with Rule 21.8.[6] The Exchange notes that it does not have a closing auction in which market participants may participate in an auction rotation that determines the closing price for a series, like that of the equities space, but that the proposed MOC and LOC orders merely become executable three minutes prior to the close of RTH. The Exchange queues LOC and MOC orders in the System until three minutes before the RTH market close. At that time, the System handles a LOC or MOC order as a limit order or market order, as applicable, and processes them in accordance with Rule 21.8. The Exchange believes that three minutes prior to the RTH market close is a reasonable time prior to the market close to trigger MOC and LOC orders, as it provides those orders with sufficient time to interact with contra-side interest and potentially execute at a time close to the RTH market close.[7] The proposed LOC and MOC order definitions also provide that the System cancels an LOC order or an MOC order (or an unexecuted portion of an LOC or MOC order) that does not execute by the RTH market close. This is consistent with the purpose of these orders, which is to execute near the RTH market close on the day they were submitted to the Exchange. As the execution of MOC and LOC orders is linked to the RTH market close, such orders will be valid only during RTH; however, the System will accept such orders during any trading session.[8] A User may not designate an MOC or LOC order as ''All Sessions''; [9] any MOC or LOC order designated as All Sessions will be rejected. In addition to this, the Exchange notes that Users may not designate bulk messages as MOC or LOC, which is consistent with the current requirement that bulk messages must have a time-in-force of Day to encourage Users to provide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange also notes that its affiliated exchanges, C2 and BZX Options, are simultaneously proposing to make similar changes in order to align functionality with Cboe Options.

[6] Rule 21.8 describes how the System processes orders and quotes in the Book.

[7] The Exchange notes that Cboe Options currently triggers the MOC and LOC orders three minutes prior to the RTH market close.

[8] The Exchange notes that an RTH Only MOC or LOC order submitted during Global Trading Hours (''GTH'') will remain on the book until the close of RTH.

[9] *See* Rule 21.1(d)(13) which defines ''All Sessions'' as an order a User designates as eligible to trade during both Global Trading Hours (''GTH'') and RTH. The Exchange also notes that Rule 21.1(d)(14) defines ''RTH Only'' as an order a User designates as eligible to trade only during RTH or not designated as All Sessions. Therefore, the default instruction is RTH Only and an unmarked MOC or LOC order will be treated as RTH Only. *See also* Securities Exchange Act Release No. 85797 (May 7, 2019), 84 FR 20920 (May 13, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Exchange's Opening Process and add a Global Trading Hours Session for XSP Options) (SR–CboeEDGX–2019–027).

liquidity to the Exchange's market throughout the trading day and update bulk messages in response to changed market conditions day-to-day.[10] The proposed order types are based on substantially similar order types available on Cboe Options.[11] MOC and LOC orders allow a User to execute orders in a series close to the close time.

The Exchange also proposes to include in the proposed MOC definition additional order handling for MOC orders during a ''Limit State'' or ''Straddle State'' as defined in the Regulation NMS Plan to Address Extraordinary Market Volatility (''Limit Up-Limit Down Plan''). The proposed change provides that a MOC order will not be elected if the underlying security is in a Limit or Straddle State three minutes prior to the RTH market close. If the underlying security exits the Limit or Straddle State prior to the RTH market close, the System will attempt to re-evaluate, elect, and execute the order. The Exchange notes that the proposed handling of MOC orders in a Limit or Straddle State is consistent with the Limit Up-Limit Down Plan and is based on the corresponding Cboe Options rule regarding handling of MOC orders,[12] as well as other order type definitions within the Exchange Rules that provide for similar additional handling during Limit and Straddle States.[13]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed adoption of MOC and LOC orders serves to benefit investors by allowing Users flexibility to have orders only be eligible for execution near the close, a time in which maximum significant number of participants interact on the Exchange. The Exchange believes that the proposed change promotes just and equitable principles of trade because it encourages increased participation near the close, thereby contributing to enhanced price discovery and transparency that will result in a closing price point that more closely reflects the interest of market participants. The Exchange also believes that the proposed change will benefit investors by fostering increased liquidity near the close. As stated, the proposed change is based on Cboe Options rules.[17]

Furthermore, the Exchange believes specifying that the MOC and LOC may execute no more than three minutes from the RTH close removes impediments to and perfects the mechanism of a free and open market and national market system and protects investors because it will allow Users greater flexibility regarding the execution of their orders and/or their customers' orders. The Exchange believes this three minute time-frame prior to the RTH market close is a reasonable time prior to the market close to trigger MOC and LOC orders, because it provides those orders with sufficient times to interact with contra-side interest and to potentially execute at a time close to RTH market close.

The Exchange also believes not permitting bulk messages to be MOC and LOC orders will remove impediments to and perfect the mechanism of a free and open market and protect investors because it is consistent with the purpose of bulk messages. As stated, bulk messages are currently restricted to designation as time-in-force of Day in order to encourage Users to provide liquidity to the Exchange's market during RTH and update bulk messages in response to day-to-day changed market conditions.[18] Because MOC and LOC orders are only available for execution for three minutes prior to the RTH market close, as opposed to during the entire RTH session, Exchange believes that not permitting bulk messages to be MOC or LOC orders ensures that functionality available to Users is consistent with the purpose of bulk messages.

Moreover, the Exchange also believes that rejecting MOC and LOC orders if designated as ''All Sessions'' serves to remove impediments to and perfect the mechanism of a free and open market and protect investors by providing functionality that is consistent with the purpose of MOC and LOC orders. As described above, because MOC and LOC orders are linked to the RTH close, allowing MOC or LOC orders to be marked for All Sessions (*i.e.,* RTH and GTH) would be inconsistent with the function of MOC and LOC orders. Therefore, the Exchange believes that not permitting MOC and LOC orders to be marked as All Sessions will protect investors by ensuring instructions for MOC and LOC orders are consistent with their purpose.

Additionally, the Exchange believes that the proposed additional order handling for MOC during a Limit or Straddle State protects investors because it is consistent with the Limit Up-Limit Down Plan and prevents a market order from executing outside of the specified price bands. This order handling is consistent with that of Cboe Options rules,[19] as well as other order type definitions within the Exchange Rules that provide for similar additional handling during Limit and Straddle States.[20]

Lastly, the Exchange notes that the proposed rule change is generally intended to align the functionality offered by the Exchange with functionality currently offered by Cboe Options in order to provide a consistent technology offering for the Cboe

[10] *See* Rule 21.1(f)(3), which defines time-in-force of ''Day'' as an order so designated, a limit order to buy or sell which, if not executed expires at the RTH market close. All bulk messages have a time-in-force of Day. *See also* Securities Exchange Act Release No. 84929 (December 21, 2018), 84 FR 67785 (December 31, 2018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Discontinue Bulk Order Functionality and Implement Bulk Message Functionality, and Make Other Nonsubstantive Changes) (SR–CboeEDGX–2018–060). Note Users may submit bulk messages within three minutes of the RTH market close, which would ultimately be handled in the same manner as an LOC order.

[11] *See* Cboe Options Rule 6.53, which defines a ''market-on-close'' order as a market or limit order to be executed as close as possible to the close of the market near to or at the closing price for the particular option series. The Exchange notes that in connection with migration, Cboe Options intends to propose the same definitions of market- and limit-on-close orders as proposed in this rule filing.

[12] *See* Cboe Options Rule 6.45(d)(2).

[13] *See* Rule 21.1(d)(5) and (d)(11), which provide additional order handling for Market Orders and Stop Orders, respectively, in a Limit and/or Straddle State. The Exchange notes that during a Limit or Straddle State limit orders are not impacted and continue to be eligible for execution.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

[17] *See supra* note 11.

[18] *See supra* note 10.

[19] *See supra* note 12.

[20] *See supra* note 13.

Affiliated Exchanges.[21] A consistent technology offering, in turn, will simplify the technology implementation, changes, and maintenance by Users of the Exchange that are also participants on Cboe Affiliated Exchanges.[22] The Exchange believes this consistency will promote a fair and orderly national options market system. When Cboe Options migrates to the same technology as that of the Exchange and other Cboe Affiliated Exchanges, Users of the Exchange and other Cboe Affiliated Exchanges will have access to similar functionality on all Cboe Affiliated Exchanges. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition, as the proposed rule change will apply in the same manner to all orders submitted as MOC or as LOC. MOC and LOC orders will be available to all Users, and MOC and LOC orders from all Users will be handled in the same manner. The use of MOC and LOC orders will be voluntary. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition because the proposed change is based on rules that allow for substantially the same order types that are available on another options exchange.[23]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6) thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to offer two order types that are substantially similar to order types that are currently available on Cboe Options. Thus, as represented by the Exchange, the proposed rule change does not introduce any new functionality or present any novel issues. For this reason, the Commission designates the proposed rule change to be operative on June 20, 2019, the day before the Exchange would like to implement MOC and LOC orders.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2019–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2019–035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2019–035 and should be submitted on or before July 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12543 Filed 6–13–19; 8:45 am]

BILLING CODE 8011–01–P

[21] *See supra* note 5.

[22] *Id.*

[23] *See supra* note 11.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86077; File No. SR–C2–2019–014]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 6.4 by Extending the Penny Pilot Program Through December 31, 2019

June 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2019, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend Rule 6.4 by extending the Penny Pilot Program through December 31, 2019. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe C2 Exchange, Inc.

* * * * *

Rule 6.4. Minimum Increments for Bids and Offers

(a)–(b) No change.

Interpretations and Policies . . .

.01 No change.

.02 The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively traded, multiply listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day in the first month of each quarter. The Penny Pilot will expire on [June 30]*December 31,* 2019.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Penny Pilot Program (the ''Pilot Program'') is scheduled to expire on June 30, 2019. The Exchange proposes to extend the Pilot Program until December 31, 2019. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange lastly represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program.

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on June 30, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

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. Specifically, the Exchange believes that, by extending the expiration of the Pilot Program, the proposed rule change will allow for further analysis of the Pilot Program and a determination of how the Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. In addition, the Exchange has been authorized to act jointly in extending the Pilot Program and believes the other

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

exchanges will be filing similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) [9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2019–014 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–C2–2019–014. 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–C2–2019–014 and should be submitted on or before July 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

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BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86072; File No. SR–NASDAQ–2019–039]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 5615 To Allow Additional Issuers Who List Only Specific Securities To Be Able To Avail Themselves of Certain Exemptions Under Corporate Governance Requirements and To Amend Nasdaq Rule IM–5620 To Exclude Additional Categories of Issuers Listing Only Specific Securities From the Annual Shareholder Meeting Requirement

June 10, 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 (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Nasdaq Rule 5615 to modify the exemptions available from certain corporate governance requirements, add similar exemptions for issuers of only non-voting preferred securities and debt securities, and add a definition of ''Derivative Securities''.

Nasdaq also proposes to amend Nasdaq Rule IM–5620 to modify the exemptions from the annual meeting requirements in Nasdaq Rule 5620(a) to include issuers of only non-voting preferred securities and debt securities in such exemptions. In addition, as discussed below, the proposed exemptions from certain corporate governance and annual meeting requirements will also be available to securities included in the new definition of ''Derivative Securities''. The Exchange notes that the proposed changes would result in rules that are substantially similar to the existing rules of the NYSE Arca, Inc. (''Arca'').[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Arca Rule 5.3–E (Corporate Governance and Disclosure Policies).

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (i) amend Nasdaq Rule 5615 (Exemptions from Certain Corporate Governance Requirements), which outlines the exemptions available from some of its corporate governance requirements for certain issuers, as well as to modify and expand the exemptions available to issuers of certain securities; (ii) add a definition for ''Derivative Securities'' applicable only to the Nasdaq Rule 5600 Series; (iii) detail the exemptions available to issuers that only list non-voting preferred securities, debt securities, and Derivative Securities; and (iv) amend Nasdaq Rule IM–5620 to update the exemptions from the annual meeting requirements to include issuers that only list non-voting preferred securities, debt securities, and Derivative Securities. The Exchange notes that the proposed changes would result in rules that are substantially similar to the existing rules of Arca [4] and are supported by prior Commission approval orders [5] and immediately effective exchange proposals.[6] However while NextShares (Nasdaq Rule 5745) are included in the new definition for ''Derivative Securities'', Arca rules do not include an equivalent product. But for the reasons discussed below, the Exchange believes that NextShares are entitled to the proposed exemptions because NextShares are similar to products listed pursuant to both Nasdaq and Arca rules.

Nasdaq Rule 5615 currently provides exemptions to issuers of certain securities listed pursuant to the Nasdaq Rule 5700 series from portions of the Nasdaq Rule 5600 series.[7] Nasdaq Rule 5615(a)(1) provides exemptions for asset-backed issuers [8] and other passive issuers [9] from the provisions of Nasdaq Rule 5605(b) (as related to the majority independent directors), Nasdaq Rule 5605(c) (Audit Committee Requirements), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), Nasdaq Rule 5610 (Code of Conduct), and Nasdaq Rule 5615(c)(2) (Controlled Company Exemption).

Nasdaq Rule 5615(a)(3) provides the parameters around which a Foreign Private Issuer may rely on home country practice in lieu of certain requirements of the Nasdaq Rule 5600 series. This rule also includes the disclosure requirements when an issuer chooses to follow home country practice. Certain products listed pursuant to the Nasdaq Rule 5700 Series are able to rely on Nasdaq Rule 5615(a)(3) as they are issued by Foreign Private Issuers.[10] Nasdaq Rule 5615(a)(5) provides exemptions for management investment companies registered under the Investment Company Act of 1940 [11] from the provisions of Nasdaq Rule 5605(b) (Independent Directors), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), and Nasdaq Rule 5610 (Code of Conduct).

In addition, under Nasdaq Rule 5615(a)(5), management investment companies are exempt from Nasdaq Rule 5605(c) (Audit Committee Requirements), except for the provisions of Rule 10A–3 of the Securities Exchange Act of 1934 (''SEC Rule 10A–3'').[12] Currently, products that can rely on the exemptions within Nasdaq Rule 5615(a)(5) are Index Fund Shares (Nasdaq Rule 5705(b)), Managed Fund Shares (Nasdaq Rule 5735) and NextShares (Nasdaq Rule 5745).

Nasdaq IM–5620 provides exemptions to issuers of certain securities listed pursuant to the requirements of Nasdaq Rule 5620(a) (Meetings of Shareholders). Currently, Portfolio Depositary Receipts (Nasdaq Rule 5705(a)), Index Fund Shares (Nasdaq Rule 5705(b)), and Trust Issued Receipts (Nasdaq Rule 5720) are exempt from the annual meeting requirements.[13]

Nasdaq proposes to add a definition of ''Derivative Securities'' to Nasdaq Rule 5615 (the ''Proposed Definition'').[14] This definition will include Portfolio Depository Receipts (Nasdaq Rule 5705(a)), Index Fund Shares (Nasdaq Rule 5705(b)), Equity Index-Linked Securities (Nasdaq Rule 5710(k)(i)), Commodity-Linked Securities (Nasdaq Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (Nasdaq Rule 5710(k)(iii)), Futures-Linked Securities (Nasdaq Rule 5710(k)(iv)), Multifactor Index-Linked Securities (Nasdaq Rule 5710(k)(v)), Index-Linked Exchangeable Notes (Nasdaq Rule 5711(a)), Equity Gold Shares (Nasdaq Rule 5711(b)), Trust Certificates (Nasdaq Rule 5711(c)), Commodity-Based Trust Shares (Nasdaq Rule 5711(d)), Currency Trust Shares (Nasdaq Rule 5711(e)), Commodity Index Trust Shares (Nasdaq Rule 5711(f)), Commodity Futures Trust Shares (Nasdaq Rule 5711(g)), Partnership Units (Nasdaq Rule 5711(h)), Managed Trust Securities (Nasdaq Rule 5711(j)), Selected Equity-linked Debt Securities (''SEEDS'') (Nasdaq Rule 5715), Trust Issued Receipts (Nasdaq Rule 5720), Managed Fund Shares (Nasdaq Rule 5735)), and

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 49810 (June 4, 2004), 69 FR 32647 (June 10, 2004) (SR–PCX–2003–35) (adopting the predecessor to Arca Rule 5.3–E), Securities Exchange Act Release No. 57268 (February 4, 2008), 73 FR 7614 (February 8, 2008) (SR–Amex–2006–31), and Securities Exchange Act Release No. 53578 (March 30, 2006), 71 FR 17532 (April 6, 2006) (SR–NASD–2005–073).

[6] *See* Securities Exchange Act Release No. 83324 (May 24, 2018), 83 FR 25076 (May 31, 2018) (SR–NYSEArca–2018–31).

[7] Nasdaq notes that Cooperative and Limited Partnerships are not listed pursuant to the Nasdaq Rule 5700 Series. Therefore, Nasdaq Rules 5615(a)(2) and 5615(a)(4) which describe the exemptions from the Nasdaq Rule 5600 series for Cooperatives and Limited Partnerships, respectively are not applicable to this filing.

[8] IM–5615–1 defines as issuers ''that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.''

[9] Nasdaq Rule 5615(a)(1)(B) includes Portfolio Depositary Receipts as an example of a passive issuer.

[10] Currently, issuers of securities such as Linked Securities (Nasdaq Rule 5710) that are foreign private issuers and have a primary equity listing on either Nasdaq or the New York Stock Exchange are able to utilize the exemptions provided for in Nasdaq Rule 5615(a)(3).

[11] 15 U.S.C 80a.

[12] 17 CFR 240.10A–3.

[13] Nasdaq IM–5620 also exempts securities listed pursuant to Nasdaq Rule 5730(a) (unless the listed security is a common stock or voting preferred stock equivalent).

[14] Proposed Nasdaq Rule 5615(a)(6)(B).

NextShares (Nasdaq Rule 5745).[15] Securities included in the proposed definition will be exempt from certain corporate governance requirements of Nasdaq Rule 5605 and the annual meeting requirements in Nasdaq Rule 5620(a) as described in this proposal. Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents.

Below are the securities included in the Proposed Definition, as well as a reference to the comparable Arca rules for listing similar securities that are entitled to similar exemptions as proposed herein:

Product type	Nasdaq rule	Arca rule
Commodity Futures Trust Shares	5711(g)	8.204–E.
Commodity Index Trust Shares	5711(f)	8.203–E.
Commodity-Based Trust Shares	5711(d)	8.201–E.
Commodity-Linked Securities [16]	5710(k)(ii)	5.2–E(j)(6)(B)(II).
Currency Trust Shares	5711(e)	8.202–E.
Equity Gold Shares	5711(b)	5.2–E(j)(5).
Selected Equity-Linked Debt Securities (''SEEDS'')	5715	5.2–E(j)(2) (Equity Linked Notes).
Equity-Index Linked Securities	5710(k)(i)	5.2–E(j)(6)(B)(I).
Fixed-Income Linked Securities	5710(k)(iii)	5.2–E(j)(6)(B)(IV).
Futures-Linked Securities	5710(k)(iv)	5.2–E(j)(6)(B)(V).
Index Fund Shares (ETFs)	5705(b)	5.2–E(j)(3) (Investment Company Units).
Index-Linked Exchangeable Notes	5711(a)	5.2–E(j)(4).
Managed Fund Shares	5735	8.600–E.
Managed Trust Securities	5711(j)	8.700–E.
Multifactor Index-Linked Securities	5710(k)(v)	5.2–E(j)(6)(B)(VI).
NextShares	5745	N/A.
Partnership Units	5711(h)	8.300–E.
Portfolio Depositary Receipts	5705(a)	8.100–E.
Trust Certificates	5711(c)	5.2–E.(j)(7).
Trust Issued Receipts	5720	8.200–E.

The Exchange believes it is appropriate that Portfolio Depositary Receipts (Nasdaq Rule 5705(a)) and Index Fund Shares (Nasdaq Rule 5705(b)) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because these securities are currently exempt from the provisions of Nasdaq Rule 5605(b) (Independent Directors), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), Nasdaq Rule 5610 (Code of Conduct), and Nasdaq Rule 5620(a) (Meetings of Shareholders).[17]

The Exchange also believes it is appropriate that Equity Index-Linked Securities (Nasdaq Rule 5710(k)(i)), Commodity-Linked Securities (Nasdaq Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (Nasdaq Rule 5710(k)(iii)), Futures-Linked Securities (Nasdaq Rule 5710(k)(iv)), Multifactor Index-Linked Securities (Nasdaq Rule 5710(k)(v)), Index-Linked Exchangeable Notes (Nasdaq Rule 5711(a)) and SEEDS (Nasdaq Rule 5715) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because each are separate forms of unsecured debt of an issuer that is already subject to the corporate governance and annual meeting requirements of a national securities exchange.[18]

If the issuer is listed on Nasdaq, it is already subject to the requirements of the Nasdaq Rule 5600 Series. If the issuer is listed on the New York Stock Exchange LLC (''NYSE''), it is already subject to corporate governance standards that are substantially similar to Nasdaq's. In addition, Nasdaq believes that it is appropriate to exempt these securities from the annual meeting requirements of Nasdaq Rule 5620(a) because the holders of these securities have economic interests and other limited rights that do not include voting rights. Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange believes that exempting these securities from the annual meeting requirements is consistent with rules of other exchanges that were previously approved by the Commission.[19]

In addition, while unlike traditional debt securities, these securities derive their value from the performance of an underlying index or reference asset, they retain many of the same characteristics as traditional debt securities [20] and, therefore, the Exchange believes it is consistent to treat them accordingly with regard to the corporate governance and annual meeting requirements.[21] The Exchange notes that including these securities in the Proposed Definition and thereby creating exemptions from certain provisions of Nasdaq Rule 5615 and the annual meeting requirements of Nasdaq Rule 5620(a), is substantially similar to the Arca rules.[22]

Similarly, the Exchange believes it is appropriate that Equity Gold Shares (Nasdaq Rule 5711(b)) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because like such classes of derivative securities, Equity Gold Shares

[15] NYSE Arca rules do not include an equivalent to Nasdaq Rule 5745 (NextShares).

[16] The Exchange notes that listing standards for both Commodity and Currency-Linked Securities are included within Nasdaq Rule 5710(k)(ii).

[17] *See* Nasdaq Rule 5615(a)(5) for the exemptions for Index Fund Shares and Nasdaq Rule 5615(a)(1) for the exemptions regarding Portfolio Depositary Receipts.

[18] Nasdaq Rule 5730(a)(2), with which securities listed pursuant to Nasdaq Rule 5710, 5711(a) and 5715 must comply, states, in part, the issuers common stock or voting preferred stock, or their equivalent ''must be listed on the Nasdaq Global Market, Nasdaq Global Select Market or the New York Stock Exchange (NYSE) or be an affiliate of a Company listed on the Nasdaq Global Market, Nasdaq Global Select Market or the NYSE''.

[19] *See* Securities Exchange Act Release No. 57268 (February 4, 2008), 73 FR 7614 (February 8, 2008) (SR–Amex–2006–31).

[20] Like traditional debt securities, these securities are debt of the issuer and have a specific date of maturity.

[21] The Exchange notes that this is consistent with the treatment of ''debt securities'' under Arca Rule 5.3–E (Corporate Governance and Disclosure Policies).

[22] *See supra* note 3.

are passive investment vehicles that hold a beneficial interest in a specified commodity trust. In addition, Equity Gold Shares are treated in a similar fashion to Index Fund Shares under the existing Nasdaq rules.[23] Therefore, the Exchange believes it is appropriate that Equity Gold Shares are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein as Index Fund Shares are already exempt from certain provisions of the Nasdaq Rule 5600 series.[24]

Additionally, the Exchange believes it is appropriate that Trust Certificates (Rule 5711(c)) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because these securities represent an interest in a passive investment vehicle that are issued by entities created solely to issue securities and invest in the underlying index or reference assets. The trust does not have a board of directors and the holders of Trust Certificates have no voting rights, unless required under state law, with regard to corporate matters, including election of trustees. Therefore, the Exchange believes that Trust Certificates should be included in the Proposed Definition and should not be subject to the annual meeting requirements of Nasdaq Rule 5620(a). Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange notes that including these securities in the Proposed Definition and thereby creating exemptions from certain provisions of Nasdaq Rule 5615 and the annual meeting requirements of Nasdaq Rule 5620(a), is substantially similar to the Arca rules.[25]

The Exchange also believes it is appropriate that Commodity-Based Trust Shares (Nasdaq Rule 5711(d)), Currency Trust Shares (Nasdaq Rule 5711(e)), Commodity Index Trust Shares (Nasdaq Rule 5711(f)), and Commodity Futures Trust Shares (Nasdaq Rule 5711(g)) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because shares of these securities are passive investment vehicles that hold a beneficial interest in a specified commodity trust that is not managed like a corporation and does not have officers or a board of directors. These securities are already exempt from Nasdaq Rule 5605(b) (Independent Directors), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), and Nasdaq Rule 5610 (Code of Conduct).[26] In addition, while shareholders may have limited voting rights in certain circumstances, they do not have the right to elect directors. Therefore, given the limited voting rights, lack of directors or officers, and the passive nature of the trust, the Exchange believes these securities should not be subject to the annual meeting requirements of Nasdaq Rule 5620(a). Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange believes that these changes are consistent with rules of other exchanges that were previously approved by the Commission.[27]

The Exchange also believes that it is appropriate that Partnership Units (Nasdaq Rule 5711(h)) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because Partnership Units are passive investment vehicles that hold a beneficial interest in a specified partnership that is not managed like a corporation and does not have a board of directors. In addition, the Exchange believes Partnership Units should not be subject to the annual meeting requirements of Nasdaq Rule 5620(a) because holders have limited voting rights and the general partner oversees the operation of the partnership. Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. The Exchange believes that these changes are consistent with rules of other exchanges that were previously approved by the Commission.[28]

Nasdaq believes it is appropriate that Trust Issued Receipts are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because Trust Issued Receipts are passive investment vehicles that hold a beneficial interest in a specified partnership that is not managed like a corporation and does not have a board of directors. In addition, the Exchange believes that Trust Issued Receipts should not be subject to the annual meeting requirements of Nasdaq Rule 5620(a) because these securities are currently exempt from this rule.[29]

Nasdaq believes it is appropriate that Managed Fund Shares (Nasdaq Rule 5735) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because Managed Fund Shares are currently exempt from the provisions of Nasdaq Rule 5605(b) (Independent Directors), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), and Nasdaq Rule 5610 (Code of Conduct).[30] In addition, Nasdaq believes that it is appropriate to exempt these securities from the annual meeting requirements of Nasdaq Rule 5620(a) because like Index Fund Shares (which are currently provided an exemption from the annual meeting requirements of Nasdaq Rule 5620(a)),[31] Managed Fund Shares are securities issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of an intraday portfolio value. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of Managed Fund Shares to value their holdings on an ongoing basis and lessen the need for shareholders to directly deal with management at an annual meeting. Therefore, Nasdaq further believes it is appropriate that Managed Fund Shares be afforded the proposed exemptions to the annual meeting requirements of Nasdaq Rule 5620(a). Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents. As stated in a

[23] Rule 5711(b)(i) states that ''while Equity Gold Shares are not technically Index Fund Shares and thus not are not covered by Nasdaq Rule 5705, all other rules that reference ''Index Fund Shares'' shall also apply to Equity Gold Shares.''

[24] *See infra* notes 29 and 30.

[25] *See supra* note 3.

[26] The Exchange interprets these securities to be currently exempt pursuant to Nasdaq Rule 5615(a)(1) (Asset-backed Issuer and Other Passive Issuers).

[27] *See supra* note 19.

[28] *Id.*

[29] *See* Nasdaq IM–5620.

[30] *See* Nasdaq Rule 5615(a)(5).

[31] *See* Securities Exchange Act Release No. 53578 (March 30, 2006), 71 FR 17532 (April 6, 2006) (SR–NASD–2005–073). As noted in the filing, Nasdaq believes these exchange-traded funds are generally passive investment vehicles that seek to match the performance of an index and must obtain an exemptive order from the Commission before they offer securities. As a result, Nasdaq notes that the operations of the issuers of these securities are circumscribed by numerous representations and conditions of the applicable exemptive orders, and that the issuers of these securities do not typically experience the need for operational or other changes requiring a shareholder vote, and, by extension a shareholder meeting.

previous Commission approval order,[32] exchange-traded funds are registered under, and remain subject to, the Investment Company Act of 1940 (''Investment Company Act''), which imposes various shareholder-voting requirements that may be applicable to such funds.[33]

The Exchange also believes it is appropriate that NextShares (Nasdaq Rule 5745) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because NextShares are already afforded exemptions from certain portions of the Nasdaq Rule 5600 Series.[34] In addition, Nasdaq believes it is appropriate to provide NextShares an exemption from the annual meeting requirements in Nasdaq Rule 5620(a) because like Index Fund Shares (which are already provided an exemption from Nasdaq Rule 5620(a)),[35] NextShares are securities issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of an intraday portfolio value. These requirements provide important investor protections and ensure that the net asset value and the market price remain closely tied to one another while maintaining a liquid market for the security. These protections, along with the disclosure documents regularly received by investors, allow shareholders of NextShares to value their holdings on an ongoing basis and lessen the need for shareholders of NextShares to deal directly with management at an annual meeting. Therefore, Nasdaq believes it is appropriate that NextShares be afforded the proposed exemptions from certain provisions of Nasdaq Rule 5615 and the annual meeting requirements of Nasdaq Rule 5620(a). Nasdaq notes that these issuers may still be required to hold shareholder meetings, including special meetings, as required by federal or state law or their governing documents.

The Exchange specifically does not propose that securities listed pursuant to Nasdaq Rule 5730 (Listing Requirements for Securities Not Otherwise Specified (Other Securities)) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein because the characteristics of these securities are unknown and therefore the Exchange cannot determine whether allowing exemptions to the Rule 5600 Series is appropriate. In addition, the Exchange does not propose that Trust Units (Nasdaq Rule 5711(i)), Currency Warrants (Nasdaq Rule 5711(k)), Alpha Index-Linked Securities (Nasdaq Rule 5712), Paired Class Shares (Nasdaq Rule 5713) or Index Warrants (Nasdaq Rule 5725) are included in the Proposed Definition and, therefore, entitled to the exemptions proposed herein, as the Exchange does not anticipate listing such securities in the near future.[36] The proposed rule language will also clearly indicate that products included in the Proposed Definition are subject to certain exemptions under the Nasdaq Rule 5600 Series.

As noted above, Nasdaq Rule 5615 sets forth exemptions from the corporate governance requirements in the Nasdaq Rule 5600 series for certain companies. For example, Nasdaq Rule 5615(a)(1) exempts asset-backed issuers and other passive issuers from the requirements of Nasdaq Rule 5605(b) (Independent Directors), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), and Nasdaq Rule 5610 (Code of Conduct).[37]

The Exchange proposes to amend Nasdaq Rule 5615(a)(5) by removing references to Index Fund Shares, Managed Fund Shares, and NextShares and including these securities in the Proposed Definition. These changes will conform the exemptions from the Nasdaq Rule 5600 Series that are afforded to management investment companies[38] with the exemptions under the Arca Rules for Index Fund Shares and Managed Fund Shares.[39] The Exchange believes that these changes are consistent with those previously approved by the Commission.[40]

The Exchange proposes to add new Nasdaq Rule 5615(a)(6). Nasdaq Rule 5615(a)(6)(A) will provide that issuers listing only non-voting preferred securities, debt securities, or Derivative Securities are exempt from Nasdaq Rule 5605(b) (Independent Directors), Nasdaq Rule 5605(c) (Audit Committee Requirements, except for the applicable provisions of SEC Rule 10A–3 as discussed below), Nasdaq Rule 5605(d) (Compensation Committee Requirements), Nasdaq Rule 5605(e) (Independent Director Oversight of Director Nominations), Nasdaq Rule 5610 (Code of Conduct), and Nasdaq Rule 5620(a) (Meetings of Shareholders).[41] However, Nasdaq Rule 5615(a)(6)(A) will continue to require such companies to comply with the requirements of Nasdaq Rule 5625, pursuant to which an issuer will provide Nasdaq with prompt notification after an executive officer of the company becomes aware of any noncompliance by the company with the requirements of the Nasdaq Rule 5600 Series.

Consistent with the existing exemptions available for certain other securities listed pursuant to the Nasdaq Rule 5700 Series, these issuers must comply with the applicable provisions of SEC Rule 10A–3[42] and the proposed rule will specifically state that requirement.[43] The proposed rule thereby applies the requirements of SEC Rule 10A–3 to the issuer's audit committee. As noted above, the proposed rule also imposes on the

[32] *See* Securities Exchange Act Release No. 53578 (March 30, 2006), 71 FR 17532 (April 6, 2006) (SR–NASD–2005–073).

[33] *See e.g.,* Section 16 of the Investment Company Act, which requires, among others, an investment company's initial board of directors to be elected by the shareholders at an annual or special meeting. 15 U.S.C. 80a–16(a).

[34] *See supra* note 30.

[35] *See supra* note 29.

[36] Should the Exchange list Trust Units, Currency Warrants, Alpha Index-Linked Securities Paired Class Shares or Index Warrants in the future, it may consider whether to amend its rules at that time to allow for certain corporate governance exclusions applicable to such classes of securities.

[37] Nasdaq Rule 5615(a)(1) also provides exemptions for Nasdaq Rule 5605(c) (Audit Committee) and Nasdaq Rule 5615(c) (Controlled Company Exemption). *See also* note 12 and accompanying text for descriptions of additional exemptions provided under Nasdaq Rule 5615(a)(5).

[38] The Exchange notes that business development companies (as defined in Nasdaq IM–5615–4) will remain subject to all of the requirements of Nasdaq Rule 5600.

[39] *See supra* note 3.

[40] *See* Securities Exchange Act Release No. 49810 (June 4, 2004), 69 FR 32647 (June 10, 2004) (SR–PCX–2003–35).

[41] Nasdaq notes that the rule proposal for the recently approved Listing Rule 5702 (Corporate Bonds) included plans to seek exemptions to certain requirements of the Nasdaq Rule 5600 Series. Nasdaq would consider Corporate Bonds to be ''debt securities'' for the purpose of the exemptions proposed herein. Similar to Linked Securities, Corporate Bonds are non-convertible debt of an issuer and have to have a class of equity listed on an exchange. In the case of Corporate Bonds, the equity must be listed on Nasdaq, NYSE American or NYSE. In addition, Nasdaq does not propose to exempt Corporate Bonds from Nasdaq Rule 5630 (Review of Related Party Exemptions), Nasdaq Rule 5635 (Shareholder Approval), or Nasdaq Rule 5640 (Voting Rights) as stated in the rule proposal for Nasdaq Rule 5702. (*See* Securities Exchange Act Release No. 84575 (November 13, 2018), 83 FR 58309 (November 19, 2018) (SR–NASDAQ–2018–070)).

[42] 17 CFR 240.10A–3.

[43] Nasdaq Rule 5615(a)(5) states, in part, ''. . . management investment companies that issue Index Fund Shares, Managed Fund Shares, and NextShares, as defined in Rules 5705(b), 5735, and 5745 are exempt from the Audit Committee requirements set forth in Rule 5605(c), except for the applicable requirements of SEC Rule 10A–3.''

issuer the obligation to promptly notify Nasdaq after an executive officer of the issuer becomes aware of any noncompliance by the issuer with the requirements of the Nasdaq Rule 5600 series, including noncompliance with the audit committee provisions that are required by SEC Rule 10A–3 and which are set forth in Nasdaq Rule 5605(c).

This proposed change will conform Nasdaq's treatment of these issuers with that of existing Arca requirements.[44] The proposed rule will also state that an issuer that has non-voting preferred securities, debt securities, or Derivative Securities listed on the Exchange that also lists its common stock or voting preferred stock or their equivalent on Nasdaq will be subject to all the requirements of the Nasdaq 5600 Rule Series. Nasdaq also proposes to add the Proposed Definition as Nasdaq Rule 5615(a)(6)(B).

Finally, the Exchange proposes to amend Nasdaq IM–5620 to amend the annual meeting requirements of Nasdaq Rule 5620(a) to clarify that issuers of only non-voting preferred securities, debt securities or Derivative Securities[45] are not subject to the rule. The Exchange believes that the proposed amendment is appropriate because the holders of non-voting preferred securities, debt securities or Derivative Securities do not have voting rights with respect to the election of directors except in very limited circumstances as required by federal or state law or their governing documents.[46] The existing provisions of Nasdaq IM–5620 already provide exemptions for securities that are the same or similar to the securities proposed for inclusion in the Proposed Definition.[47] The rule will continue to state that if the Company also lists common stock or voting preferred stock, or their equivalent, on Nasdaq, the Company will be subject to the annual meeting requirements of Nasdaq Rule 5620.[48] The Exchange notes that the proposed changes are substantially similar to Arca requirements.[49]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[50] in general, and furthers the objectives of Section 6(b)(5) of the Act,[51] in particular, in that it is designed to promote just and equitable principles of trade, to foster competition 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 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 amendments to: (i) Amend Nasdaq Rule 5615; (ii) add a definition for ''Derivative Securities'' applicable only to the Nasdaq Rule 5600 Series; (iii) detail the exemptions available to issuers that only list non-voting preferred securities, debt securities, and Derivative Securities; and (iv) amend Nasdaq IM–5620 to update the exemptions from the annual meeting requirements to include issuers that only list non-voting preferred securities, debt securities, and Derivative Securities, are consistent with the protection of investors.

Nasdaq believes that the proposed exemptions for issuers of only non-voting preferred stock, debt securities and Derivative Securities are consistent with the protection of investors, as the holders of these securities do not have voting rights with respect to the election of directors, except in very limited circumstances, as required by state or federal law or their governing documents. Moreover, such securities are generally issued by an entity that is either (i) structured solely as vehicles for the issuance of non-voting or derivative securities, or (ii) issued by an operating company primarily listed on a national securities exchange and therefore subject to the full corporate governance and annual meeting requirements of that exchange.[52]

Additionally, the net asset value of Derivative Securities that the Exchange proposes to exclude from its annual meeting requirement is determined by the market price of each fund's underlying securities or other reference asset. Shareholders of such securities products listed on the Exchange receive regular disclosure documents describing the pricing mechanism for their securities and detailing how they can value their holdings. Accordingly, holders of such securities can value their investment on an ongoing basis. Because of these factors, Nasdaq believes there is a reduced need for shareholders to engage with management of issuers of these securities and thus no need for the issuers of such securities to hold annual shareholder meetings absent the existence of other listed securities with director election voting rights. Further, although the Exchange proposes to exclude issuers of such securities from holding an annual meeting, such issuers may still be required to hold special meetings as required by state or federal law or their governing documents. The Exchange believes that issuers of only non-voting preferred stock, debt securities and Derivative Securities are excluded from complying with substantially similar requirements on other national securities exchanges.[53]

An issuer that has non-voting preferred stock, debt securities and Derivative Securities listed on the Exchange that also lists the issuers common stock or voting preferred stock or their equivalent on Nasdaq will be subject to all the requirements of the Nasdaq Rule 5600 Series. Also, the Exchange notes that although NextShares (Nasdaq Rule 5745) are included in the new definition for ''Derivative Securities,'' Arca rules do not include an equivalent product. However, Nasdaq believes that that the inclusion of NextShares in the Proposed Definition is consistent with the protection of investors because like Index Fund Shares (which are currently exempt from many of the corporate governance and annual meeting requirements of the Nasdaq 5600 Rule Series),[54] NextShares are securities issued by an open-end investment company registered under the 1940 Act that are available for creation and redemption on a continuous basis, and require dissemination of an intraday portfolio value. In addition, NextShares are already exempt from portions of the

[44] *See supra* note 3.

[45] The Exchange is proposing to expand the list of products that are exempt from the annual meeting requirements of Nasdaq Rule 5620(a). The proposed list of products consists of Portfolio Depository Receipts and Index Fund Shares (Rule 5705); Equity Index-Linked Securities (Rule 5710(k)(i)), Commodity-Linked Securities (Rule 5710(k)(ii)), Fixed Income Index-Linked Securities (5710(k)(iii)), Futures-Linked Securities (5710(k)(iv)), Multifactor Index-Linked Securities (5710(k)(v)), Index-Linked Exchangeable Notes (Rule 5711(a)), Equity Gold Shares (Rule 5711(b)), Trust Certificates (Rule 5711(c)), Commodity-Based Trust Shares (Rule 5711(d)), Currency Trust Shares (Rule 5711(e)), Commodity Index Trust Shares (Rule 5711(f)), Commodity Futures Trust Shares (Rule 5711(g)), Partnership Units (Rule 5711(h)), Managed Trust Securities (Rule 5711(j)), SEEDS (Rule 5715), Trust Issued Receipts (Rule 5720), Managed Fund Shares (Rule 5735), and NextShares (Rule 5745). Portfolio Depositary Receipts, Index Fund Shares and Trust Issued Receipts are currently excluded from the annual meeting requirement in Nasdaq Rule 5620(a).

[46] *See supra* discussion regarding Derivative Securities, pp. 7–17.

[47] *See supra* note 29.

[48] Nasdaq notes that closed-end management investment companies will still be subject to the annual meeting requirements of Nasdaq Rule 5620.

[49] *See supra* note 3.

[50] 15 U.S.C. 78f(b).

[51] 15 U.S.C. 78f(b)(5).

[52] *See supra* note 18.

[53] The Proposed Definition is substantially similar to securities deemed to be ''derivative and special purpose securities'' pursuant to Arca Rule 5.3–E.

[54] *See supra* notes 29 and 30.

Nasdaq Rule 5600 Series as well as subject to the same filing and disclosure requirements as Index Fund Shares.

Nasdaq also believes that the addition of a definition for ''Derivative Securities'' applicable to the Nasdaq Rule 5600 Series will improve the clarity of the rules and reduce possible investor confusion.

For the reasons stated herein, the Exchange believes the proposed amendments provide appropriate levels of investor protections, consistent with the investor protection requirement of Section 6(b)(5), and would conform the listing standards across exchanges resulting in enhanced competition among markets and removing an impediment to a free and open market and national market system.

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, as amended. Instead, Nasdaq believes that the proposed rule change to conform Nasdaq Rule 5615(a) and Nasdaq Rule 5620(a) so that they are substantially similar to Arca Rule 5.3–E may enhance competition since Nasdaq and Arca will have substantially similar listing requirements for these issuers.

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 [55] and subparagraph (f)(6) of Rule 19b–4 thereunder.[56]

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–NASDAQ–2019–039 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–2019–039. 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–2019–039, and should be submitted on or before July 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Eduardo A. Aleman,

Deputy Secretary.

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BILLING CODE 8011–01–P

[55] 15 U.S.C. 78s(b)(3)(A)(iii).

[56] 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.

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86071; File No. SR–ISE–2019–18]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot To Permit the Listing and Trading of Options Based on ⅕ the Value of the Nasdaq-100 Index

June 10, 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 June 6, 2019, Nasdaq ISE, LLC (''ISE'' or ''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 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 extend the pilot to permit the listing and trading of options based on ⅕ the value of the Nasdaq-100 Index (''Nasdaq-100'') currently set to expire on June 26, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://ise.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

ISE filed a proposed rule change to permit the listing and trading of index options on the Nasdaq 100 Reduced Value Index (''NQX'') on a twelve month pilot basis.[3]

NQX options trade independently of and in addition to NDX options, and the NQX options are subject to the same rules that presently govern the trading of index options based on the Nasdaq-100, including sales practice rules, margin requirements, trading rules, and position and exercise limits. Similar to NDX, NQX options are European-style and cash-settled, and have a contract multiplier of 100. The contract specifications for NQX options mirror in all respects those of the NDX options contract listed on the Exchange, except that NQX options are based on ⅕ of the value of the Nasdaq-100, and are P.M.-settled pursuant to Options 4A, Section 12(a)(6).

The Exchange proposes to amend ISE Options 4A, Section 12(a)(6) to extend the current NQX pilot period which ends on the earlier of (1) 12 months following the date of the first listing of the option, which was June 26, 2018,[4] or (2) June 30, 2019 to November 4, 2019. The Exchange continues to have sufficient capacity to handle additional quotations and message traffic associated with the proposed listing and trading of NQX options. In addition, index options are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. The Exchange also continues to have adequate surveillance procedures to monitor trading in NQX options thereby aiding in the maintenance of a fair and orderly market. Additionally, there is continued investor interest in these products and provide additional time to collect data related to the pilot.

Pilot Report

The Exchange is in the process of making public on its website data and analysis previously submitted to the Commission on the Pilot Program and will make public any data or analysis it submits under the Pilot Program in the future. If in the future the Exchange proposes an additional extension of the Pilot Program or proposes to make the Pilot Program permanent, the Exchange will submit an annual report to the Commission consistent with the order approving the establishment of the Pilot Program at least two months prior to the expiration date of the Pilot Program. Conditional on the findings in the Pilot Report, the Exchange will file with the Commission a proposal to extend the pilot program, adopt the pilot program on a permanent basis or terminate the pilot.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. By extending the pilot, the Exchange believes it will attract order flow to the Exchange, increase the variety of listed options, and provide a valuable hedge tool to retail and other investors. Specifically, the Exchange believes that the pilot will provide additional trading and hedging opportunities for investors while providing the Commission with data to monitor for and assess any potential for adverse market effects of allowing P.M.-settlement for NQX options, including on the underlying component stocks.

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. NQX options would be available for trading to all market participants and therefore would not impose an undue burden on intra-market competition. The Exchange believes that the proposed rule change will not impose an undue burden on inter-market competition as this rule change will continue to facilitate the listing and trading of a new option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The listing of NQX will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100. Furthermore, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with the Nasdaq-100 and seek Commission approval to list and trade options on such an index.

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) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6)[9] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that investors may continue to trade NQX options listed by the Exchange as part of the pilot program on an uninterrupted basis. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it

[3] *See* Securities Exchange Act Release No. 82911 (March 20, 2018), 83 FR 12966 (March 26, 2018) (SR–ISE–2017–106) (Approval Order).

[4] See Options Trader Alert #2018–22.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

would thereby avoid any investor confusion that could result from a temporary interruption in the pilot program. Accordingly, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is 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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2019–18 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–18. 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–ISE–2019–18 and should be submitted on or before July 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12541 Filed 6–13–19; 8:45 am]

BILLING CODE 8011–01–P

[11] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86078; File No. SR–CboeBZX–2019–051]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Through December 31, 2019, the Penny Pilot Program (''Penny Pilot'') in Options Classes in Certain Issues (''Pilot Program'') Previously Approved by the Commission

June 10, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposal for the Cboe BZX Options Market (''BZX Options'') to extend through December 31, 2019, the Penny Pilot Program (''Penny Pilot'') in options classes in certain issues (''Pilot Program'') previously approved by the Commission. The text of the proposed rule change is below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 21.5. Minimum Increments

(a)–(c) (No changes).

Interpretations and Policies

.01 The Exchange will operate a pilot program set to expire on [June 30]*December 31,* 2019 to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Information Circulars distributed to Members and posted on the Exchange's website. The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day in the first month of each quarter.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 Pilot Program is scheduled to expire on June 30, 2019. The Exchange proposes to extend the Pilot Program until December 31, 2019. The Exchange believes that extending the Pilot Program will allow for further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future. The Exchange is specifically authorized to act jointly with the other options exchanges participating in the Pilot Program in identifying any replacement class. The Exchange lastly represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program.

The Exchange represents that the Exchange has the necessary system capacity to continue to support operation of the Pilot Program. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the proposed rule change allows for an extension of the Pilot Program prior to its expiration on June 30, 2019 for the benefit of market participants. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options. The Exchange notes that this proposal does not propose any new policies or provisions that are unique or unproven, but instead relates to the continuation of an existing program that operates on a pilot basis.

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. In this regard, the Exchange notes that the rule change is being proposed in order to continue the Pilot Program, which is a competitive response to analogous programs offered by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)[9] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeBZX–2019–051 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–051. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 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.

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–051 and should be submitted on or before July 5, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12545 Filed 6–13–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15973 and #15974; OKLAHOMA Disaster Number OK–00130]

Presidential Declaration Amendment of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment 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 06/08/2019.

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: The notice of the President's major disaster declaration for the State of Oklahoma, dated 06/01/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Canadian, Creek, Logan, Osage, Ottawa, Rogers, Washington.

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Blaine, Caddo, Cleveland, Craig, Delaware, Garfield, Grady, Kay, Kingfisher, Lincoln, McClain, Noble, Nowata, Okfuskee, Oklahoma, Payne.

Kansas: Chautauqua, Cherokee, Cowley, Montgomery

Missouri: McDonald, Newton

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12600 Filed 6–13–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15980 and #15981; SOUTH DAKOTA Disaster Number SD–00092]

Presidential Declaration of a Major Disaster for the State of South Dakota

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 South Dakota (FEMA–4440–DR), dated 06/07/2019.

Incident: Severe Winter Storm, Snowstorm, and Flooding.

Incident Period: 03/13/2019 through 04/26/2019.

DATES: Issued on 06/07/2019.

Physical Loan Application Deadline Date: 08/06/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/09/2020.

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 06/07/2019, 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): Bon Homme, Charles Mix, Hutchinson, Minnehaha, Yankton; the Pine Ridge Reservation to include the counties of Oglala Lakota, Jackson, and Bennett; the Rosebud Reservation to include the counties of Mellette and Todd; and the Cheyenne River Sioux Reservation to include the counties of Dewey and Ziebach.

Contiguous Counties (Economic Injury Loans Only):

South Dakota: Aurora, Brule, Clay, Corson, Custer, Davison, Douglas, Fall River, Gregory, Haakon, Hanson, Jones, Lake, Lincoln, Lyman, McCook, Meade, Moody, Pennington, Perkins, Potter, Stanley, Sully, Tripp, Turner, Walworth.

Iowa: Lyon.

Minnesota: Pipestone, Rock.

Nebraska: Boyd, Cedar, Cherry, Dawes, Keya Paha, Knox, Sheridan.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
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 15980B and for economic injury is 159810.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12601 Filed 6–13–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15984 and #15985; South Dakota Disaster Number SD–00093]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of South Dakota

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 South Dakota (FEMA–4440–DR), dated 06/07/2019.

Incident: Severe Winter Storm, Snowstorm, and Flooding.

Incident Period: 03/13/2019 through 04/26/2019.

DATES: Issued on 06/07/2019.

Physical Loan Application Deadline Date: 08/06/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/09/2020.

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 06/07/2019, 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: Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Hamlin, Hand, Hanson, Hughes, Hutchinson, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lincoln, Lyman, Marshall, McCook, McPherson, Mellette, Miner, Minnehaha, Moody, Oglala Lakota, Pennington, Perkins, Potter, Roberts, Sanborn, Spink, Sully, Todd, Tripp, Turner, Union, Walworth, Yankton, and Ziebach; and the Cheyenne River Sioux Reservation, the Lake Traverse Reservation, and the Rosebud Reservation.

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 15984B and for economic injury is 159850.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12603 Filed 6–13–19; 8:45 am]

BILLING CODE 8206–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15982 and #15983; Arkansas Disaster Number AR–00104]

Presidential Declaration of a Major Disaster for the State of Arkansas

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 Arkansas (FEMA–4441–DR), dated 06/08/2019.

Incident: Severe Storms and Flooding.

Incident Period: 05/21/2019 and continuing.

DATES: Issued on 06/08/2019.

Physical Loan Application Deadline Date: 08/07/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 03/09/2020.

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 06/08/2019, 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): Conway, Crawford, Faulkner, Jefferson, Perry, Pulaski, Sebastian, Yell

Contiguous Counties (Economic Injury Loans Only):

Arkansas: Arkansas, Cleburne, Cleveland, Franklin, Garland, Grant, Lincoln, Logan, Lonoke, Madison, Montgomery, Pope, Saline, Scott, Van Buren, Washington, White

Oklahoma: Adair, Le Flore, Sequoyah

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 15982B and for economic injury is 159830.

(Catalog of Federal Domestic Assistance Number 59008)

Jerome Edwards,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2019–12602 Filed 6–13–19; 8:45 am]

BILLING CODE 8206–03–P

DEPARTMENT OF STATE

[Public Notice: 10795]

Notice of Determinations; Culturally Significant Object Imported for Exhibition—Determinations: "Homer at the Beach" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object to be included in the exhibition ''Homer at the Beach,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit

object at the Cape Ann Museum, Gloucester, Massachusetts, from on or about August 2, 2019, until on or about December 1, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–12615 Filed 6–13–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 10792]

60-Day Notice of Proposed Information Collection: Supplemental Questionnaire To Determine Entitlement for a U.S. Passport

ACTION: Notice of request for public comment.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 60 days for public comment.

DATES: The Department will accept comments from the public up to August 13, 2019.

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

- *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov*. You can search for the document by entering ''Docket Number: DOS–2019–0019'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.
- *Email: PPTFormsOfficer@state.gov.*
- *Regular Mail:* Send written comments to: PPT Forms Officer, U.S. Department of State, CA/PPT/S/PMO, 44132 Mercure Cir., P.O. Box 1199, Sterling, VA 20166–1199.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Supplemental Questionnaire to Determine Entitlement for a U.S. Passport.
- *OMB Control Number:* 1405–0214.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services (CA/PPT).
- *Form Number:* DS–5513.
- *Respondents:* United States Citizens and Nationals.
- *Estimated Number of Respondents:* 4,076.
- *Estimated Number of Responses:* 4,076.
- *Average Time per Response:* 85 minutes.
- *Total Estimated Burden Time:* 5,774 annual hours.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The primary purpose for soliciting this information is to establish entitlement for a U.S. Passport Book or Passport Card. The information may also be used in connection with issuing other travel documents or evidence of citizenship, and in furtherance of the Secretary's responsibility for the protection of U.S. nationals abroad and to administer the passport program.

Methodology

The supplemental Questionnaire to Determine Entitlement for a U.S. Passport is used to supplement an existing passport application and solicits information relating to the respondent's family and birth circumstances that is needed prior to passport issuance. The form is available in hard copy from the Department and is not available on the Department's website.

Rachel M. Arndt,

Deputy Assistant Secretary for Passport Services.

[FR Doc. 2019–12587 Filed 6–13–19; 8:45 am]

BILLING CODE 4710–06–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36286]

Atlanta BeltLine, Inc.—Acquisition Exemption—Norfolk Southern Railway Co.

Atlanta BeltLine, Inc. (ABI), a non-carrier, non-profit corporation implementation agent of the City of Atlanta, Ga., has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the right to reactivate rail service from Norfolk Southern Railway Company (NSR) on an approximately 1.0 mile of rail-banked railroad line extending from milepost DF 632.10 to milepost DF 633.10, including the western leg of the Armour Wye, in Atlanta, Fulton County, Ga. (the Line), as well as NSR's real property interest in the segment of the Line between milepost DF 632.10 and milepost DF 632.42 (the Segment).

The Board authorized abandonment of the Line in 2017. *See Norfolk S. Ry.—Aban. Exemption—in Atlanta, Ga.,* AB 290 (Sub–No. 388X) (STB served Aug. 3, 2017). ABI states that the Line is currently subject to interim trail use under a trail use agreement between ABI and NSR under the National Trails System Act, 16 U.S.C. 1247(d). (Notice of Trail Use Agreement, Oct. 17, 2017, AB 290 (Sub–No. 388X).)

ABI's verified notice describes two agreements. First, on March 2, 2017, ABI and NSR entered into a purchase and sale agreement for the Segment by quitclaim deed, subject to certain conditions, in anticipation of NSR's abandonment of the Line. ABI states that it and NSR consummated the transfer of the real property interest in the Segment and that NSR executed the

quitclaim deed on October 13, 2017. Second, ABI states that it and NSR entered into a trail use agreement for the Line on October 13, 2017, which sets out the terms and conditions for ABI's acquisition of NSR's freight reactivation rights on the Line. ABI states that the transactions between ABI and NSR that are the subject of this proceeding will complete the transfer of all of NSR's ownership rights and responsibilities in the Line to ABI.[1]

ABI certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier. ABI further certifies that the proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after June 28, 2019, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than June 21, 2019 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36286, 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 ABI's representatives, Charles A. Spitulnik and Allison I. Fultz, Kaplan Kirsch & Rockwell LLP, 1634 I (Eye) Street NW, Suite 300, Washington, DC 20006.

According to ABI, this action is categorically excluded from environmental reporting requirements under 49 CFR 1105.6(c), and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov*.

Decided: June 11, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–12619 Filed 6–13–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 748]

Indexing the Annual Operating Revenues of Railroads

The Surface Transportation Board (Board or STB) is publishing the annual inflation-adjusted index and deflator factors for 2018. The deflator factors are used by the railroads to adjust their gross annual operating revenues for classification purposes. This indexing methodology ensures that railroads are classified based on real business expansion and not on the effects of inflation. Classification is important because it determines the extent to which individual railroads must comply with the Board's reporting requirements.

The Board's deflator factors are based on the annual average Railroad's Freight Price Index developed by the Bureau of Labor Statistics. The Board's deflator factor is used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation-adjusted indexes and deflator factors are presented as follows:

RAILROAD INFLATION-ADJUSTED INDEX AND DEFLATOR FACTOR TABLE

Year	Index	Deflator
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40
2005	522.41	78.29
2006	567.34	72.09
2007	588.30	69.52
2008	656.78	62.28
2009	619.73	66.00
2010	652.29	62.71
2011	708.80	57.71
2012	740.61	55.23
2013	764.19	53.53
2014	778.41	52.55
2015	749.22	54.60
2016	732.38	55.85
2017	758.95	53.90
2018	801.61	51.03

Application of the annual deflator factors results in the following annual revenue thresholds:

RAILROAD REVENUE THRESHOLDS

Year	Factor	Class I	Class II
2014	0.5255	475,754,803	38,060,384
2015	0.5460	457,913,998	36,633,120
2016	0.5585	447,621,226	35,809,698
2017	0.5390	463,860,933	37,108,875
2018	0.5103	489,935,956	39,194,876

DATES: The inflation-adjusted indexes and deflator factors are effective January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Board decisions and notices are available at *www.stb.gov.*

[1] ABI states that it acquired the real estate interests in the portion of the Line from milepost DF 632.42 to DF 633.10 in 2008. The Board previously determined that, in accordance with the principles set out in *Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad,* 8 I.C.C.2d 835 (1991), this acquisition of the right-of-way between mileposts DF 632.42 and 633.10 did not require Board authority. *See Atlanta Dev. Auth.—Verified Pet. for a Declaratory Order,* FD 35991, slip op. at 3, 5–6 (STB served May 26, 2017).

[1] In *Montana Rail Link, Inc., & Wisconsin Central Ltd., Joint Petition for Rulemaking with Respect to 49 CFR Part 1201,* 8 I.C.C.2d 625 (1992), the Board's predecessor, the Interstate Commerce Commission, raised the revenue classification level for Class I railroads from $50 million (1978 dollars) to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also raised from $10 million (1978 dollars) to $20 million (1991 dollars).

By the Board, Dr. William J. Brennan, Director, Office of Economics.

Kenyatta Clay,

Clerance Clerk.

[FR Doc. 2019–12562 Filed 6–13–19; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36310]

Kansas & Oklahoma Railroad, LLC—Operation Exemption—Colorado Pacific Railroad, LLC

Kansas & Oklahoma Railroad, LLC (K&O), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to permit K&O to operate approximately 121.9 miles of rail line (the Line) between milepost 747.5 near Towner, Colo., and milepost 869.4 near NA Junction, Colo., pursuant to an agreement with Colorado Pacific Railroad, LLC (CPR).

K&O states that it is a wholly owned subsidiary of Watco Holdings, Inc., and that CPR, a subsidiary of KCVN, LLC, is the current owner of the Line. *See KCVN, LLC—Feeder Line Application—Line of V & S Ry., Located in Crowley, Pueblo, Otero, & Kiowa Ctys., Colo.,* FD 36005 (STB served Dec. 18, 2017). According to K&O, there has been no traffic on the Line since 2012.

K&O states that it has entered into an Operating Agreement with CPR. K&O further states that the agreement between K&O and CPR does not contain any provision that prohibits K&O from interchanging traffic with a third party or limits K&O's ability to interchange with a third party.

K&O certifies that its projected annual revenues as a result of this transaction will not result in K&O's becoming a Class II or Class I rail carrier, but its projected annual revenues will exceed $5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption becomes effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. Concurrently with its verified notice, however, K&O filed a petition for waiver of the labor notice requirements. K&O's waiver request will be addressed in a separate decision.

K&O states that it expects to consummate the transaction on or sometime after the effective date of the exemption. The Board will establish the effective date in its separate decision on the waiver request.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 21, 2019.

All pleadings, referring to Docket No. FD 36310, 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 K&O's representative, Karl Morell, Karl Morell & Associates, 440 1st Street NW, Suite 440, Washington, DC 20001.

According to K&O, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(1).

Board decisions and notices are available at *www.stb.gov.*

Decided: June 10, 2019.

By the Board, Allison C. Davis, Director, Office of Proceedings.

Regena Smith-Bernard,

Clearance Clerk.

[FR Doc. 2019–12588 Filed 6–13–19; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2019–0001]

Generalized System of Preferences (GSP): Notice Regarding the 2019 GSP Annual Product Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of hearing and requests to testify and for public comments.

SUMMARY: The Office of the United States Trade Representative (USTR) has accepted petitions submitted in connection with the 2019 GSP Annual Product Review for further review. This notice includes the schedule for submission of public comments and the date of a public hearing to review these petitions and products by the GSP Subcommittee of the Trade Policy Staff Committee (TPSC).

DATES:

June 26, 2019 at midnight EDT: Deadline for submission of comments, pre-hearing briefs, and requests to appear at the GSP Subcommittee Public Hearing on the 2019 GSP Annual Product Review.

July 2, 2019 at 1:30 p.m. EDT: The GSP Subcommittee will convene a public hearing on all petitioned product additions, product removals, and competitive needs limitation (CNL) waiver petitions that it accepted for the 2019 GSP Annual Product Review. The hearing will be in Rooms 1 and 2, 1724 F Street NW, Washington, DC 20508, beginning at 1:30 p.m.

August 15, 2019 at midnight EDT: Deadline for submission of post-hearing comments or briefs in connection with the GSP Subcommittee Public Hearing.

September 7, 2019: USTR expects that the U.S. International Trade Commission (USITC) will deliver a report to USTR providing advice on the probable economic effects of adding products to GSP eligibility, removing products from GSP eligibility, and granting CNL waiver petitions during the 2019 GSP Annual Product Review. Interested parties can post comments on the USITC report on *www.regulations.gov* using Docket Number USTR–2019–0001 (instructions for submissions are provided below). Comments are due ten calendar days after the publication date of the USITC's public report.

November 1, 2019: Effective date for any modifications that the President proclaims to the list of articles eligible for duty-free treatment under GSP resulting from the 2019 GSP Annual Product Review and for determinations related to CNL waivers.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal Rulemaking Portal: *https://www.regulations.gov,* using docket number USTR–2019–0001. Follow the instructions for submitting comments in ''Requirements for Submissions'' below. For alternatives to on-line submissions, please contact Yvonne Jamison at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: Erland Herfindahl, Deputy Assistant USTR for GSP, 1724 F Street NW, Washington, DC 20508. The telephone number is (202) 395–2974 and the email address is *gsp@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The GSP program provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461–2467), as amended, and is implemented in accordance with Executive Order 11888 of November 24, 1975, as

modified by subsequent Executive Orders and Presidential Proclamations.

B. Petitions Requesting Modifications of GSP Product Eligibility

In a notice published in the **Federal Register** on March 25, 2019 (84 FR 11150), USTR announced the 2019 GSP Annual Product Review and indicated that the GSP Subcommittee was prepared to receive petitions to modify the list of products that are eligible for duty-free treatment under the GSP program and petitions to waive CNLs on imports of certain products from specific beneficiary countries. The GSP Subcommittee has reviewed the product and CNL waiver petitions submitted in response to these announcements, and has decided to accept for review several petitions seeking to: Remove products from GSP eligibility for certain GSP beneficiary countries; waive certain CNLs; and redesignate certain products to GSP eligibility for certain GSP beneficiary countries.

USTR posted a list of petitions and products accepted for review at *https://ustr.gov/issue-areas/preference-programs/generalized-system-preferences-gsp/current-reviews/2019-annual* under the title ''Petitions Accepted in the 2019 GSP Annual Product Review.'' You also can find this list at *www.regulations.gov* in Docket Number USTR–2019–0001. Acceptance indicates only that the TPSC found that the subject petition warranted further consideration and that a review of the requested action will take place.

The GSP Subcommittee invites public comments on any petition it has accepted for the 2019 GSP Annual Product Review. Public comments are due on June 26, 2019, at midnight EDT. The GSP Subcommittee also will convene a public hearing on these products and petitions. See below for information on how to submit a request to testify at this hearing.

C. Notice of Public Hearing for the GSP Product Review

The GSP Subcommittee will hold a hearing on July 2, 2019, beginning at 1:30 p.m., for products and petitions accepted for the 2019 GSP Annual Product Review. The hearing will be held at 1724 F Street NW, Washington, DC 20508 and will be open to the public. USTR will make a transcript of the hearing available on *www.regulations.gov* approximately two weeks after the hearing date.

All interested parties wishing to make an oral presentation at the hearing must submit, following the ''Requirements for Submissions'' below, the name, address, telephone number, and email address (if available), of the witness(es) representing their organization by midnight, June 26, 2019. Requests to present oral testimony in connection with the public hearing must include a written brief or summary statement, in English, which you also must submit by midnight, June 26, 2019. Oral testimony before the GSP Subcommittee will be limited to five-minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. USTR will accept post-hearing briefs or statements that conform to the regulations cited below and you submit, in English, by midnight, August 15, 2019. Parties not wishing to appear at the public hearing may submit pre-hearing and post-hearing briefs or comments by the aforementioned deadlines.

D. Requirements for Submissions

You must submit requests to testify, written comments, and pre-hearing and post-hearing briefs by the applicable deadlines set forth in this notice. You must make all submissions in English via *http://www.regulations.gov,* using Docket Number USTR–2019–0001. USTR will not accept hand-delivered submissions. To make a submission using *http://www.regulations.gov,* enter the appropriate docket number in the 'search for' field on the home page and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' The *regulations.gov* website offers the option of providing comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. The GSP Subcommittee prefers that you provide submissions in an attached document and note 'see attached' in the 'type comment' field on the online submission form. At the beginning of the submission, or on the first page (if an attachment) include the following text (in bold and *underlined*): (1) ''2019 GSP Annual Product Review''; (2) the subject matter or the product description and related HTS tariff number; and (3) whether the document is a 'written comment', 'notice of intent to testify,' 'pre-hearing brief,' or 'post-hearing brief.' Submissions should not exceed thirty single-spaced, standard letter-size pages in twelve-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

You will receive a tracking number upon completion of the submission procedure at *http://www.regulations.gov.* The tracking number is confirmation that *regulations.gov* received the submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for the website. USTR may not consider documents you do not submit in accordance with these instructions. If you are unable to provide submissions as requested, please contact the GSP Program at USTR to arrange for an alternative method of transmission.

E. Business Confidential Submissions

If you ask USTR to treat information you submitted as business confidential information (BCI), you must certify that the information is business confidential and you would not customarily release it to the public. You must clearly designate BCI by marking the submission ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific information that is BCI. Additionally, you must include 'Business Confidential' in the 'type comment' field. For any submission containing BCI, you must separately submit a non-confidential version, *i.e.,* not as part of the same submission with the confidential version, indicating where BCI has been redacted. USTR will post the non-confidential version in the docket and it will be open to public inspection.

F. Public Viewing of Review Submissions

Submissions in response to this notice, except for information granted business confidential status under 15 CFR 2003.6, will be available for public viewing pursuant to 15 CFR 2007.6 at *http://www.regulations.gov* upon completion of processing, usually within two weeks of the relevant due date or date of the submission. USTR will make public versions of all documents relating to these reviews available for public viewing in Docket Number USTR–2019–0001 at *http://www.regulations.gov* upon completion of processing.

Erland Herfindahl,

Deputy Assistant U.S. Trade Representative for the Generalized System of Preferences, Office of the United States Trade Representative.

[FR Doc. 2019–12589 Filed 6–13–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2019–0004–N–10]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before August 13, 2019.

ADDRESSES: Submit written comments on these ICR activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–NEW'' (the relevant OMB control number for the ICR is listed below) and should also include the title of the ICR. Alternatively, comments may be faxed to (202) 493–6216 or (202) 493–6497, or emailed to Mr. Brogan at *Robert.Brogan@dot.gov,* or Ms. Toone at *Kim.Toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: (202) 493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Inquiry into Blocked Highway-Rail Grade Crossings throughout the United States.

OMB Control Number: 2130–NEW.

Abstract: FRA is interested in obtaining more information regarding the frequency, location, and impacts of highway-rail grade crossings blocked by slow-moving or idling trains. Currently, there are no federal laws or regulations that specifically address how long a train may occupy a crossing, whether idling or operating at slow speeds. Some States and local municipalities have laws that vary in how long trains are permitted to occupy crossings.

There are potential safety concerns with crossings that are blocked by trains. For instance, pedestrians may crawl under or through idling trains. Also, emergency response vehicles and first responders may be significantly delayed from responding to an incident or transporting patients to a hospital. In addition, drivers may take more risks, such as driving around lowered gates at a crossing or attempting to beat a train through a crossing without gates, in order to avoid a lengthy delay if they are aware that trains routinely block a crossing for extended periods of time. There are also potential economic impacts that affect businesses, such as stores or restaurants not being accessible to a customer base for an extended period of time. Finally, highway-rail grade crossings that are blocked for extended periods of time may create societal nuisances, such as roadway congestion, late mail service and deliveries, disrupted school and work arrival and dismissal, or missed appointments.

Over a recent two-year period, from April 1, 2017 to March 31, 2019, FRA's Office of Railroad Safety received 669 email complaints about blocked crossings through FRA's ''Contact Us'' website. This web page is used by the general public to submit any type of comment/question to FRA's Office of Railroad Safety, not just reports of blocked crossings. FRA proposes to add new dedicated links to its existing website and its existing phone application (app) for users to report blocked crossings. This would simplify the reporting of blocked crossing information and standardize the data received about blocked crossings.

The proposed data collection would be conducted using three methods:

1. A link would be added to FRA's existing website directing a user to a web-based form to submit information about a blocked crossing to FRA. Access to this web-based form would be unrestricted and available to the general public.
2. A link would be added to the existing FRA phone app ''FRA Crossing Locator App'' that will direct users to an app-based form to submit information about a blocked crossing to FRA. Access to the form on the phone app would be unrestricted and available to the general public.
3. A link would be added to FRA's existing website directing law enforcement personnel to submit information about a blocked crossing to FRA. Access for law enforcement personnel would be restricted to users with a username and password and managed by FRA.

Upon accessing the form, a user would be notified that there are no

federal laws or regulations that specifically address the length of time a train may occupy a highway-rail grade crossing. The user would be notified that the information submitted will not be forwarded to a railroad, State, or local agency, and is only being used for data collection purposes to determine the locations, times, and impacts of blocked crossings. The questions asked on each form will be identical for all three methods of collection.

Type of Request: Approval of a new collection of information.

Affected Public: Public individuals and law enforcement personnel.

Form(s): FRA F 6180.XXX.

Respondent Universe: General public and national law enforcement personnel.

Frequency of Submission: On occasion; one-time.

Reporting Burden:

Form	Total estimated annual responses	Average time per response	Total annual burden hours
General Public via the unrestricted form on the FRA website.	335 responses	15 minutes	84 hours.
General Public via the FRA Crossing Locator Phone Application.	50 responses	15 minutes	13 hours.
Law Enforcement Personnel via the limited access form on the FRA website.	100 responses	15 minutes	25 hours.
Total	485 responses	15 minutes	122 hours.

Total Estimated Annual Responses: 485.

Total Estimated Annual Burden: 122 hours.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2019–12572 Filed 6–13–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2019–0004–N–6]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Requests (ICRs) abstracted below. Before submitting these ICRs to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before August 13, 2019.

ADDRESSES: Submit written comments on the ICRs activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB Control Number 2130–XXXX,'' (the relevant OMB control number for each ICR is listed below) and should also include the title of the ICR. Alternatively, comments may be faxed to 202–493–6216 or 202–493–6497, or emailed to Mr. Brogan at *robert.brogan@dot.gov,* or Ms. Toone at *kim.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: U.S. DOT Crossing Inventory.

OMB Control Number: 2130–0017.

Abstract: On January 6, 2015, FRA published in the **Federal Register** a final rule that requires railroads that operate one or more trains through highway-rail or pathway crossings to submit information to the U.S. DOT National Highway-Rail Crossing Inventory about the crossings through which they operate.[1] *See* 80 FR 746. These amendments, mandated by section 204 of the Rail Safety Improvement Act of 2008, require railroads to submit information about previously unreported and new highway-rail and pathway crossings to the U.S. DOT National Highway-Rail Crossing Inventory and to periodically update existing crossing data.

Type of Request: Extension with change (revised estimates) of a current information collection.

Affected Public: Businesses (railroads), States, and the District of Columbia (DC).

Form(s): FRA F 6180.71.

Respondent Universe: 692 railroads, 50 States and DC.

Frequency of Submission: On occasion/monthly.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hour dollar cost equivalent[2]
234.403(a), (b), (c), (e)(3)—Submission of data to the U.S. DOT Highway-Rail Crossing Inventory: Completion of inventory form.	51 States/DC & 692 railroads.	1,495 forms	30 minutes	748 hours	$55,352
—Mass update lists of designated data submitted by railroads/states.	51 States/DC & 692 railroads.	1,081 lists	30 minutes	541	40,034
—Excel lists of submitted data	51 States/DC & 692 railroads.	750 lists	15 minutes	188	13,912
—Changes/corrections to Crossing Inventory data submitted via GX 32 computer program.	51 States/DC & 692 railroads.	134,719 records	3 minutes	6,736	498,464
—Written requests by states/railroads for FRA Crossing Inventory Guide.	51 States/DC & 692 railroads.	5 requests	15 minutes	1 hour	74
(d)—Reporting Crossing Inventory data by state agencies on behalf of railroads: Written notices to FRA.	51 States/DC & 692 railroads.	15 notices	30 minutes	8	592
(e)(1)—Consolidated reporting by parent corporation on behalf of its subsidiary railroads: Written notice to FRA.	692 railroads	250 notices	30 minutes	125	9,625
(e)(2)—Immediate notification to FRA by parent corporation of any changes in the list of subsidiary railroads for which it reports.	692 railroads	75 notices	30 minutes	38	2,926
234.405(a)(1)—Initial submission of previously unreported highway-rail and pathway crossings through which they operate by primary operating railroads: Providing assigned crossing inventory number to each railroad that operates one or more trains through crossing.	692 railroads	5,300 provided assigned inventory numbers.	5 minutes	442	34,034
—Primary operating railroad providing assigned inventory number to other (2) railroads operating through crossing.	692 railroads	10,600 assigned numbers.	5 minutes	883	67,991
(a)(3)—Completed inventory forms for each previously unreported crossing.	692 railroads	5,300 forms	20 minutes	1,767	136,059
(c)—Duty of all operating railroads: Notification to FRA of previously unreported crossing through which it operates.	692 railroads	450 notices/notifications.	20 minutes	150	11,550
(d)—Incomplete submission by state agency: Written certification by primary operating railroad that state has not provided requested crossing information.	692 railroads	35 certification statements.	2 minutes	1 hour	77
—Copies of written certification statements to other operating railroads and responsible state agency.	692 railroads	105 mailed certification copies.	2 minutes	4	308
234.407(a)—Submission of initial data to the Crossing Inventory for new Crossings: Providing assigned inventory numbers for new highway-rail and pathway crossings through which they operate by primary operating railroads to each railroad that operates one or more trains through the crossing.	692 railroads	50 assigned inventory numbers.	5 minutes	4	308

[1] This final rule was subsequently amended on June 10, 2016, in response to a petition for reconsideration submitted by the Association of American Railroads. *See* 81 FR 37521.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hour dollar cost equivalent [2]
(a)(3)—Completed inventory forms for each new highway-rail & pathway crossing provided each operating railroad operating trains through crossing.	692 railroads	50 forms	5 minutes	4	308
(b) Each operating railroad must submit accurate inventory forms or electronic equivalent to the FRA crossing inventory for new highway-rail & pathway crossings operating on separate tracks.	692 railroads	50 inventory forms	1.5	75	5,775
234.409(a)—Submission of periodic updates to the Crossing Inventory by primary operating railroad.	692 railroads	80,775 crossing invent. updates.	2.5minutes	3,366	259,182
234.411(a)—Crossing sale: Submission of Crossing Inventory form by any operating railroad that sells all or part of highway-rail and pathway crossing.	692 railroads	400 updated crossing inventory forms.	2	800	61,600
—Notification/report by railroad to primary operating railroad of sale of all or part of a highway-rail or pathway on or after June 10, 2016.	692 railroads	400 notices/reports	15 minutes	100	7,700
(b)—Crossing closure: Submission of Crossing Inventory form by primary operating railroad that closes highway-rail and pathway crossing.	692 railroads	85 crossing inventory forms (closures).	5 minutes	7	539
(c)—Primary operating RR submission of inventory form for any surface/warning device changes at crossing.	692 railroads	400 forms	30 minutes	200	15,400
234.413(a & b)—Recordkeeping—RR Duplicate copy of each inventory form submitted in hard copy to the Crossing Inventory.	692 railroads	5,901 duplicate copies.	1 minute	98	7,546
—Copy of electronic confirmation received from FRA after electronic submission of crossing data to Crossing Inventory.	692 railroads	80,775 copies	1 minute	1,346	103,642
—List of locations where a copy of any record required by this Subpart may be accessed and copied.	692 railroads	692 lists	5 minutes	58	4,466

Total Estimated Annual Responses: 329,758.

Total Estimated Annual Burden: 17,690 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $1,337,464.

Title: Special Notice for Repairs.

OMB Control Number: 2130–0504.

Abstract: Under 49 CFR part 216, FRA and State inspectors may issue a Special Notice for Repairs to notify a railroad in writing of an unsafe condition involving a locomotive, car, or track. The railroad must notify FRA in writing when the equipment is returned to service or the track is restored to a condition permitting operations at speeds authorized for a higher class, specifying the repairs completed. FRA and State inspectors use this information to remove from service freight cars, passenger cars, and locomotives until they can be restored to a serviceable condition. They also use this information to reduce the maximum authorized speed on a section of track until repairs can be made.

Type of Request: Extension with change (revised estimates) of a current information collection.

Affected Public: Businesses (railroads).

Form(s): FRA F 6180.71.

Respondent Universe: 741 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hour dollar cost equivalent
216.13(b)—Special Notice for Repairs: Locomotive—RR reply to special notice for repair informing FRA Regional Administrator that affected locomotive is returned to service.	741 railroads	5 form replies	15 minutes	1 hour	$77

[2] Based on Bureau of Labor Statistics (BLS) data, FRA is using an average hourly wage rate of 74 per hour for State employees to determine the dollar equivalent cost of estimated burden. Based on the 2017 American Association publication, Railroad Facts, FRA is using an average hourly wage rate of 77 per hour for professional/administrative to determine the same dollar equivalent costs. All hourly wage rates included 75 percent overhead costs.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hour dollar cost equivalent
216.15(b)—Special Notice for Repairs: Track—RR reply to special notice for repair informing FRA Regional Administrator that affected track is restored to condition permitting operations at speeds authorized at higher speeds.	741 railroads	50 form replies	15 minutes	13	1,001
216.21(b)—Notice of track conditions: Letter from railroad to FRA regional track engineer that affected track has been repaired and is ready for re-inspection.	741 railroads	1 letter	60 minutes	1 hour	77
216.25—Issuance of review and emergency order: Petition for review of order or letter stating track has been repaired.	741 railroads	1 letter	60 minutes	1 hour	77

Total Estimated Annual Responses: 57.

Total Estimated Annual Burden: 16 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $1,232.

Title: Bridge Safety Standards.

OMB Control Number: 2130–0586.

Abstract: The Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94, Dec. 4, 2015), Section 11405, ''Bridge Inspection Reports,'' provides a means for a State or a political subdivision of a State to obtain a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. While the FAST Act specifies that requests for such reports are to be filed with the Secretary of Transportation, the responsibility for fulfilling these requests is delegated to FRA. *See* 49 CFR 1.89.

FRA's currently approved information collection accounts for the burden that will be incurred by States and political subdivisions of States requesting a public version of a bridge inspection report generated by a railroad for a bridge located within their respective jurisdiction. FRA developed a Form titled ''Bridge Inspection Report Public Version Request Form'' to facilitate such requests by States and their political subdivisions. FRA accounts for the burden that will be incurred by railroads to provide the public version of a bridge inspection report upon agency request to FRA.

As background, FRA's final rule on bridge safety standards, 49 CFR part 237, normalized and established federal requirements for railroad bridges. *See* 75 FR 41281 (July 15, 2010). The final rule established minimum requirements to assure the structural integrity of railroad bridges and to protect the safe operation of trains over those bridges. The final rule required railroads/track owners to implement bridge management programs to prevent the deterioration of railroad bridges and to reduce the risk of human casualties, environmental damage, and disruption to the Nation's transportation system that would result from a catastrophic bridge failure. Bridge management programs were required to include annual inspection of bridges as well as special inspections, which must be conducted if natural or accidental events cause conditions that warrant such inspections. Lastly, the final rule required railroads/track owners to audit bridge management programs and bridge inspections and to keep records mandated under part 237.

The information collected is used by FRA to ensure that railroads/track owners meet Federal standards for bridge safety and comply with all the requirements of this regulation. In particular, the collection of information is used by FRA to confirm that railroads/track owners adopt and implement bridge management programs to properly inspect, maintain, modify, and repair all bridges that carry trains for which they are responsible. Railroads/track owners must conduct annual inspections of railroad bridges. Further, railroads/track owners must incorporate provisions for internal audit into their bridge management program and must conduct internal audits of bridge inspection reports. The internal audit information is used by railroads/track owners to verify that the inspection provisions of the bridge management program are being followed and to continually evaluate the effectiveness of their bridge management program and bridge inspection activities. FRA uses this information to ensure that railroads/track owners implement a safe and effective bridge management program and bridge inspection regime.

Type of Request: Extension with change (revised estimates) of a current information collection.

Affected Public: Businesses (railroads) and States, DC, and political subdivisions).

Form(s): FRA F 6180.167.

Respondent Universe: 741 railroads/50 States and DC/200 political subdivisions.

Frequency of Submission: On occasion/monthly.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hour dollar cost equivalent [3]
FAST ACT SECTION 11405 REQUIREMENTS:.					
—Form FRA F 6180.167	50 states and DC 200 state political subdivisions.	75 forms	5 minutes	6	$402

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden hour dollar cost equivalent [3]
—Railroad submission to FRA of bridge inspection report—public version.	741 railroads	75 reports	60 minutes	75	$5,025
237.3—Notifications to FRA of assignment of bridge responsibility and signed statement by assignee concerning bridge responsibility.	741 railroads	15 notifications + 15 signed statements.	90 minutes + 30 minutes.	30	$2,310
237.9—Waivers—petitions	741 railroads	2 petitions	4	8	$616
237.57—Designation of qualified individuals.	741 railroads	200 recorded designations.	15 minutes	50	$3,850
237.73—Issuance of instructions to railroad personnel by track owner.	741 railroads	100 issued written instructions.	2	200	$15,400
237.109—Nationwide annual bridge inspections—reports/records:	741 railroads	15,450 insp. reports/records.	15 minutes	3,863	$258,821
—Report of deficient condition on a bridge.	741 railroads	50 reports	30 minutes	25	$1,675
237.155—Documents & records—Establishment of RR monitoring & info. technology security systems for electronic recordkeeping.	741 railroads	5 systems	80	400	$30,800
—Employees trained in system	741 Railroads	100 employees	8	800	$61,600

Total Estimated Annual Responses: 16,087.

Total Estimated Annual Burden: 5,457 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $380,499.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Acting Chief Counsel.

[FR Doc. 2019–12574 Filed 6–13–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2006–25040]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by documents dated June 14, 2018, and April 17, 2019, the Capital Metropolitan Transportation Authority (CMTY) petitioned the Federal Railroad Administration (FRA) to modify conditions related to a waiver of compliance from certain provisions of the Federal railroad safety regulations. Specifically, CMTY requests to eliminate temporal separation requirements and the 60 miles-per-hour (MPH) speed restrictions imposed, most recently, in a decision letter dated April 20, 2015. FRA assigned the petition Docket Number FRA–2006–25040.

The CMTY commuter rail system, ''Red Line,'' connects downtown Austin, Texas, with Austin's northern suburbs along 32 miles with 9 stations. Service began in 2010 with a fleet of six diesel multiple unit (DMU) rail vehicles designated ''GTW Generation 1'' (GTW G1) built by Stadler Rail. Since 2010, these rail vehicles have operated safely under the conditions of waivers.

In its petition, CMTY states that several technical and mechanical changes have been made to the GTW G1 vehicles. Furthermore, on January 22, 2019, changes to FRA's Passenger Equipment Safety Standards, 49 CFR part 238, became effective. Together, the vehicle modification and updated regulation combine to make CMTY GTW G1 vehicles fully compliant with FRA crashworthiness standards, and more compliant with several items previously waived. As a result, CMTY asks FRA to remove the two waiver conditions requiring temporal separation and the 60 MPH speed restriction.

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 29, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone can search the electronic form of any written communications

[3] Based on the 2017 AAR publication Railroad Facts, FRA calculates the average hourly wage rate for professional/administrative staff at $77 per hour and the average hourly wage rate of bridge workers at $67 per hours to determine the dollar equivalent cost numbers. All hourly wage rates include 75 percent overhead costs.

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.). In accordance with 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,

Deputy Associate Administrator, Office of Railroad Safety.

[FR Doc. 2019–12548 Filed 6–13–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2014–0124]

Petition for Waiver of Compliance

Under part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 19, 2018, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in 49 CFR part 238, *Passenger Equipment Safety Standards.* The requested relief relates to the acquisition and operation of Tier III-compliant Next Generation High Speed Trainsets on the Northeast Corridor that FRA previously considered in this docket.

The new petition adds three new distinct requests for relief related to Amtrak's fleet of 28 High Speed Trainsets. Specifically, as detailed in the petition, Amtrak requests relief from 49 CFR 238.115 (emergency lighting), 238.131(a)(1) (side door safety system), and 238.121(c)(2) (emergency communication).

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 29, 2019 will be considered by FRA before final action is taken. Comments received after the comment period ends 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,

Deputy Associate Administrator, Office of Railroad Safety.

[FR Doc. 2019–12547 Filed 6–13–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Notice of Funding Opportunity for America's Marine Highway Projects

AGENCY: Maritime Administration, DOT.

ACTION: Notice of funding opportunity.

SUMMARY: The Consolidated Appropriations Act, 2019, appropriated $7,000,000 to the Short Sea Transportation Program, commonly referred to as the America's Marine Highway Program (AMHP). The purpose of the appropriation is to make grants available to previously designated Marine Highway Projects that support the development and expansion of documented vessels, or port and landside infrastructure. This Notice announces the availability of funding for grants and establishes selection criteria and application requirements. The U.S. Department of Transportation (Department) will award Marine Highway Grants to implement projects or components of projects previously designated by the Secretary of Transportation (Secretary) under AMHP. Only Marine Highway Projects the Secretary designated before the Notice of Funding Opportunity closing date are eligible for funding as described in this Notice.

DATES: Applications must be received by the Maritime Administration by 5 p.m. EDT on June 14, 2019.

ADDRESSES: Grant applications must be submitted electronically using *Grants.gov* (*https://www.grants.gov*). Please be aware that you must complete the *Grants.gov* registration process before submitting your application, and that the registration process usually takes 2 to 4 weeks to complete. Applicants are strongly encouraged to make submissions in advance of the deadline.

FOR FURTHER INFORMATION CONTACT: Fred Jones, Office of Ports & Waterways Planning, Room W21–311, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, phone 202–366–1123, or email *Fred.Jones@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Each section of this Notice contains

information and instructions relevant to the application process for these Marine Highway Grants, and all applicants should read this Notice in its entirety so that they have the information they need to submit eligible and competitive applications. Applications received after the deadline will not be considered except in the case of unforeseen technical difficulties as outlined below in Section D.4.

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A. Program Description
B. Federal Award Information
C. Eligibility Information
D. Application and Submission Information
E. Application Review Information
F. Federal Award Administration Information
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A. Program Description

The Secretary, in accordance with 46 U.S.C. 55601, established a short sea transportation grant program to implement projects or components of designated Marine Highway Projects. The grant funds currently available are for projects related to documented vessels and port and landside infrastructure.

The America's Marine Highway Program Office (Program Office) follows a three-step approach when supporting investment opportunities for Marine Highway services. The first step is designation of a Marine Highway Route by the Secretary. The Department accepts Marine Highway Route Designation requests at any time from Route Sponsors. Once a Route is designated, the next step is designation as a Marine Highway Project by the Secretary. Marine Highway Projects represent concepts for new services or expansions of existing marine highway services on designated Marine Highway Routes. MARAD will announce by notice in the **Federal Register** open season periods to allow Project Applicants opportunities to submit Marine Highway Project Designation applications. A Project Applicant must receive a Project Designation for that project to then become eligible for Marine Highway Grant funding, the third step referenced above. Marine Highway Grant funding (the subject of this NOFO) is provided to successful public and private sector applicants as funds are appropriated by Congress.

B. Federal Award Information

The Secretary, through the Maritime Administration (MARAD), intends to award $6,790,000 via grants to the extent that there are qualified applications. MARAD will seek to obtain the maximum benefit from the available funding by awarding grants to as many qualified projects as possible; however, MARAD reserves the right to award all funds to a single project. MARAD may also award grants supporting a portion of a project described in an application by selecting discrete components. The start date and period of performance for each award will be determined by mutual agreement of MARAD and each grant recipient. MARAD will administer each Marine Highway Grant pursuant to a grant agreement with the Marine Highway Grant recipient.

Prior recipients of Marine Highway Grants may apply for funding to support additional phases of a designated project. However, to be competitive, the grant applicant should demonstrate the extent to which the previously funded project phase has met estimated project schedules and budget, as well as the ability to realize the benefits expected for the new award.

C. Eligibility Information

To be selected for a Marine Highway Grant, an applicant must be an Eligible Applicant, and the project must be an Eligible Project.

1. Eligible Applicants

Eligible applicants for funding available under this notice are an original Project Applicant of a project that the Secretary has previously designated as a Marine Highway Project or a substitute (which can be either a public entity or a private-sector entity who has been referred to the Program Office by the original Project Applicant, with a written explanation, as part of the application). Original Project Applicants are defined as those public entities named by the Secretary in the original designated project. Grant applicants must have operational, or administrative areas of responsibility, that are adjacent to or near the relevant designated Marine Highway Project. Eligible grant applicants include State governments (including State departments of transportation), metropolitan planning organizations, port authorities, and tribal governments, or private sector operators of marine highway services within designated Marine Highway Projects.

Grant applicants are encouraged to develop coalitions and public/private partnerships, which might include vessel owners and operators; third-party logistics providers; trucking companies; shippers; railroads; port authorities; state, regional, and local transportation planners; environmental organizations; impacted communities; or any combination of entities working in collaboration on a single grant application that can be submitted by the original Project Applicant or their designated substitute. All successful grant applicants, whether they are public or private entities, must comply with all Federal requirements.

If multiple applicants submit a joint grant application, they must identify a lead grant applicant as the primary point of contact. Joint grant applications must include a description of the roles and responsibilities of each applicant, including designating the one entity that will receive the Federal funds directly from MARAD, and must be signed by each applicant.

2. Cost Sharing or Matching

An applicant must provide at least 20 percent of project costs from non-Federal sources. The application should demonstrate, such as through a letter or other documentation, the sources of these funds. Preference will be given to those projects that provide a larger percentage of costs from non-Federal sources. Matching funds are subject to the same Federal requirements described in Section F.2 as Federally-awarded funds.

3. Other

Eligible Projects

The purpose of this grant program is to create new marine highway services or to expand existing marine highway services. Only projects or their components that the Secretary has previously designated as Marine Highway Projects, are eligible for this round of grant funding. Projects proposed for funding must support the development and expansion of documented vessels or port and landside infrastructure. Grant funds may be requested for eligible project planning activities; however, market-related studies are ineligible to receive Marine Highway Grants.

The current list of designated Marine Highway Projects can be found on the Marine Highway website at: *https://www.maritime.dot.gov/grants/marine-highways/marine-highway-project-description-pages.*

D. Application and Submission Information

1. Address To Request Application Package

Applications may be found at and must be submitted through *Grants.gov*. Applications must include the Standard Form 424 (Application for Federal Assistance), which is available on the *Grants.gov* website at *https://*

www.grants.gov/web/grants/forms/sf-424-family.html.

2. Content and Form of Application Submission

In addition to the SF–424, the application should include the Project Narrative. MARAD recommends that the Project Narrative follows the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. First Page of Project Narrative—See D.2.i.
II. Project Description—See D.2.ii.
III. Project Location—See D.2.iii.
IV. Grant Funds, Sources and Uses of All Project Funding—See D.2.iv.
V. Selection Criteria—See D.2.v and E.1.
VI. Other Application Requirements—See D.2.vi.

The Project Narrative should include the information necessary for MARAD to determine that the project satisfies the requirements described in Sections B and C, and to assess the selection criteria specified in Section E.1. This includes a detailed project description, location, and budget. To the extent practicable, applicants should provide supporting data and documentation in a form that is directly verifiable by MARAD. Applicants are strongly encouraged to provide quantitative information, including baseline information, that demonstrates the project's merits and economic viability. MARAD may ask any applicant to supplement data in its application, but expects applications to be complete upon submission. Incomplete applications may not be considered for an award.

The Project Narrative should also include a table of contents, maps and graphics, as appropriate, to make the information easier to review. MARAD recommends that the Project Narrative be prepared with standard formatting preferences (a single-spaced document, using a standard 12-point font such as Times New Roman, with 1-inch margins, and the narrative text in one column only). The Project Narrative may not exceed 10 pages in length, excluding the table of contents and appendices. The only substantive portions that may exceed the 10-page limit are documents supporting assertions or conclusions made in the 10-page Project Narrative. If possible, website links to supporting documentation should be provided rather than copies of these supporting materials, though it is important to ensure that the website links are currently active and working. If supporting documents are submitted, applicants should clearly identify within the Project Narrative the relevant portion of the Project Narrative that each supporting document supports. At the applicant's discretion, relevant materials provided previously in support of a Marine Highway Project application may be referenced, updated, or described as unchanged. To the extent documents provided previously are referenced, they need not be resubmitted in support of a Marine Highway Grant application.

To ensure the Project Narrative is sufficiently detailed and informative, MARAD recommends applications include the following sections:

i. First Page of Project Narrative

The first page of the Project Narrative should provide the following items of information:

(A) Marine Highway Project name and the original Project Applicant (as stated on the Marine Highway Program's list of Designated Projects);

(B) Primary point of contact. An application must include the name, phone number, email address, and business address of the primary point of contact for the grant applicant;

(C) Total amount of the proposed grant project cost in dollars and the amount of grant funds the applicant is seeking, along with sources and share of matching funds;

(D) Executive Summary, which should include an outline of the background of the project, the need for the project, and how the grant funding will be applied in the context of the service referenced in the original Project Designation application;

(E) Project parties. The public and private partners engaged in the Marine Highway Project;

(F) The Data Universal Numbering System (DUNS) number associated with the application. Marine Highway Grants and their first-tier sub-awardees must obtain DUNS numbers, which are available at *https://fedgov.dnb.com/webform;* and

(G) Evidence of registration with the System for Award Management (SAM) at *https://www.SAM.gov.*

ii. Project Description

The next section of the application should provide a concise description of the project. The project description must be in paragraph form providing a high-level view of the overall project and its major components. This section should discuss the project's history, including a description of any previously completed components. The applicant may use this section to place the project into a broader context of other transportation infrastructure investments being pursued by the grant applicant, and, if applicable, how it will benefit communities in rural areas. This section should also include a timeline for implementing the project.

iii. Project Location

This section of the application should describe the project location, including a detailed geographical description of the proposed project, a map of the project's location and connections to existing transportation infrastructure, and geospatial data describing the project location.

The application should also state whether the project is located in an urban area (UA) or rural area (RA) as designated by the U.S. Census Bureau at *http://www2.census.gov/geo/maps/dc10map/UAUC_RefMap/ua/.*

The Department will consider a project to be in a RA if the majority of the project (determined by geographic location(s) where the majority of the money is to be spent) is located in a RA. Grant funds utilized in an UA border, including an intersection with an UA, will be considered urban for the purposes of the FY 2019 Marine Highway Grants.

iv. Grant Funds, Sources and Uses of Project Funds

This section of the application should describe the project's budget. The budget should not include any previously incurred expenses. At a minimum, it should include:

(A) Project costs;

(B) The source and amount of those funds to be used for project costs;

(C) For Non-Federal funds to be used for eligible project costs, documentation of funding commitments should be referenced here and included as an appendix to the application;

(D) For Federal funds to be used for eligible project costs, the amount, nature, and source of any required non-Federal match for those funds;

(E) A budget showing how each source of funds will be spent. The budget should show how each funding source will share in each project component, and present that data in dollars and percentages. Funding sources should be grouped into three categories: Non-Federal; Marine Highway Grant funding; and other Federal. A letter of commitment from each funding source should be an attachment to the application. If the project contains individual components, the budget should separate the costs of each project component. The budget should sufficiently demonstrate that the project satisfies the statutory cost-sharing requirements described in Section C.2.

v. Selection Criteria

This section of the application should demonstrate how the project proposed for grant funding aligns with the criteria described below and in Section E.1. MARAD encourages applicants to address each criterion, or expressly state that the project does not address the criterion. Applicants are not required to follow a specific format, but MARAD recommends applicants address each criterion separately using the outline suggested below, which provides a clear discussion that assists project evaluators. Guidance describing how MARAD will evaluate projects against the Selection Criteria is in Section E.1 of this Notice. Applicants also should review that section before considering how to organize and complete their application. To minimize redundant information in the application, MARAD encourages applicants to cross-reference from this section of their application to relevant substantive information in other sections of the application.

(A) Primary Selection Criteria

(1) This section of the application should demonstrate that the project is financially viable.

(2) This section of the application should demonstrate that the funds received will be spent efficiently and effectively.

(3) This section of the application should demonstrate that a market exists for the services of the proposed project as evidenced by contracts or written statements of intent from potential customers.

(4) This section of the application should describe the public benefits anticipated by the proposed grant project, as outlined in 46 CFR 393.3(c)(8), and described below. The public benefits described in the relevant Marine Highway Project Designation application may be referenced, updated, or described as unchanged. Applicants will need to clearly demonstrate that the original public benefits outlined in the original project designation application apply to the specific grant funding request associated with this Notice, and provide any updates or supplement the original public benefits, as necessary. To the extent referenced, this information need not be resubmitted in support of a Marine Highway Grant application. Applicants should organize their external net cost savings and public benefits of the proposed grant project based on the following six categories:

(i) Emissions benefits;
(ii) Energy savings;
(iii) Landside transportation infrastructure maintenance savings;
(iv) Economic competitiveness;
(v) Safety improvements;
(vi) System resiliency and redundancy.

vi. Other Application Requirements

(A) National Environmental Policy Act (NEPA) Requirements

Projects selected for grant award must comply with NEPA and any other applicable environmental laws. The application should provide information about the NEPA status of the project. If the environmental review process is underway but not complete at the time of the application, the application must detail where the project is in the process, indicate the anticipated date of completion, and provide a website link or other reference to copies of any environmental documents prepared.

(B) Other Federal, State, and Local Actions

An application must indicate whether the proposed project is likely to require actions by other agencies (*e.g.,* permits) or, indicate the status of such actions, provide a website link or other reference to materials submitted to the other agencies, and demonstrate compliance with other Federal, state, or local regulations and permits as applicable.

(C) Certification Requirements

For an application to be considered for a grant award, the Chief Executive Officer, or equivalent, of the applicant is required to certify, in writing, the following:

1. That, except as noted in this grant application, nothing has changed from the original application for formal designation as a Marine Highway Project; and
2. The grant applicant will administer the project and any funds received will be spent efficiently and effectively; and
3. The grant applicant will provide information, data, and reports as required.

(D) Protection of Confidential Commercial Information

Grant applicants should submit, as part of or in support of an application, publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards to the extent possible. If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: Note on the front cover that the submission contains ''Confidential Commercial Information (CCI)''; mark each affected page ''CCI''; and highlight or otherwise denote the CCI portions. MARAD will protect such information from disclosure to the extent allowed under applicable law. In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

(E) Additional Application Information Needed From Private-Sector Applicants

1. Written referral from the original successful Project Applicant stating that the private entity has been referred by the original Project Applicant for the relevant designated Marine Highway Project.
2. A description of the entity including location of the headquarters; a description of the entity's assets (tugs, barges, etc.); years in operation; ownership; customer base; and website address, if any.
3. Unique entity identifier of the parent company (when applicable): Data Universal Numbering System (DUNS + 4 number) (when applicable).
4. The most recent year-end audited, reviewed or compiled financial statements, prepared by a certified public accountant (CPA), per U.S. generally accepted accounting principles (not tax-based accounting financial statements). If CPA prepared financial statements are not available, provide the most recent financial statement for the entity. Do not provide tax returns.
5. Statement regarding the relationship between applicants and any parents, subsidiaries or affiliates, if any such entity is going to provide a portion of the match.
6. Evidence documenting applicant's ability to make proposed matching requirement (loan agreement, commitment from investors, cash on balance sheet, etc.).
7. Pro-forma financial statements reflecting financial condition at beginning of period; effect on balance sheet of grant and matching funds (*e.g.,* a decrease in cash or increase in debt, additional equity and an increase in fixed assets); and impact on company's projected financial condition (balance sheet) of completion of project, showing that company will have sufficient financial resources to remain in business.
8. Statement whether during the past five years, the applicant or any predecessor or related company has been in bankruptcy or in reorganization under Chapter 11 of the Bankruptcy Code, or in any insolvency or

reorganization proceedings, and whether any substantial property of the applicant or any predecessor or related company has been acquired in any such proceeding or has been subject to foreclosure or receivership during such period. If so, give details.

9. Additional information may be requested as deemed necessary by MARAD to facilitate and complete its review of the application. If such information is not provided, MARAD may deem the application incomplete and cease processing it.

10. Company Officer's certification of each of the following:

a. That the company operates in the geographic location of the designated Marine Highway Project;

b. That the applicant has the authority to carry out the proposed project; and

c. That the applicant has not, and will not make any prohibited payments out of the requested grant, in accordance with the Department of Transportation's regulation restricting lobbying, 49 CFR part 20.

3. DUNS and SAM Requirements

MARAD will not make an award to an applicant until the applicant has complied with all applicable DUNS and SAM requirements. Each applicant must be registered in SAM before applying, provide a valid Unique Entity Identifier number in its application, and maintain an active SAM registration with current information throughout the period of the award. Applicants may register with the SAM at *www.SAM.gov.* Applicants can obtain a DUNS number at *http://fedgov.dnb.com/webform.* If an applicant has not fully complied with the requirements by the time MARAD is ready to make an award, MARAD may determine that the applicant is not qualified to receive a Federal award under this program.

4. Submission Dates and Times

Applications must be received by 5 p.m. EDT on June 14, 2019. Late applications that are the result of failure to register or comply with *Grants.gov* application requirements in a timely manner will not be considered. Applicants experiencing technical issues with *Grants.gov* that are beyond the applicant's control must contact *MH@dot.gov* or Fred Jones at 202–366–1123 prior to the deadline with the user name of the registrant and details of the technical issue experienced. The applicant must provide: Details of the technical issue experienced; screen capture(s) of the technical issue experienced along with the corresponding ''Grant tracking number'' that is provided via *Grants.gov*; the ''Legal Name'' for the applicant that was provided in the SF–424; the name and contact information for the person to be contacted on matters involving submission that is included on the SF–424; the DUNS number associated with the application; and the *Grants.gov* Help Desk Tracking Number.

5. Funding Restrictions

MARAD will not allow reimbursement of any pre-Federal award costs that may have been incurred by an applicant. Grant funds may only be used for the purposes described in this notice and may not be used as an operating subsidy. Market-related studies are ineligible for Marine Highway Grant funds.

6. Other Submission Requirements

Grant applications must be submitted electronically using (*Grants.gov https://www.grants.gov*).

E. Application Review Information

1. Selection Criteria

This section specifies the criteria that MARAD will use to evaluate and award applications for Marine Highway Grants. These criteria incorporate the statutory requirements for this program, as well as Departmental and Programmatic priorities.

When reviewing grant applications, MARAD will consider how the proposed service could satisfy, in whole or in part, 46 U.S.C. 55601(b)(1) and (3) and all of the following criteria found at 46 U.S.C. 55601(g)(2)(B):

- The project is financially viable;
- The funds received will be spent efficiently and effectively; and
- A market exists for the services of the proposed project as evidenced by contracts or written statements of intent from potential customers.

MARAD will also consider how the proposed request for funding outlined in the grant application supports the elements of 46 CFR 393.3(c)(8), Public benefits, as a key programmatic objective.

After applying the above preferences, MARAD will consider the following key Departmental objectives:

- Supporting economic vitality at the national and regional level;
- Utilizing alternative funding sources and innovative financing models to attract non-Federal sources of infrastructure investment;
- Accounting for the life-cycle costs of the project to promote the state of good repair;
- Using innovative approaches to improve safety and expedite project delivery; and,
- Holding grant recipients accountable for their performance and achieving specific, measurable outcomes identified by grant applicants.

In awarding grants under the program, MARAD will give preference to those projects or components that present the most financially viable marine highway transportation services and require the lowest total percentage Federal share of the costs. MARAD will also give special consideration to projects located in or that support a marine highway service in a qualified opportunity zone designated pursuant to 26 U.S.C. 1400Z–1, or that emphasize improved infrastructure condition, or facilitate economic competitiveness, in rural areas.

2. Review and Selection Process

Upon receipt, MARAD will evaluate the application using the criteria outlined above. Upon completion of the technical review, MARAD will forward the applications to an inter-agency review team (Intermodal Review Team). The Intermodal Review Team will include members of MARAD, other Department of Transportation Operating Administrations, and representatives from the Office of the Secretary of Transportation. The Intermodal Review Team will assign ratings of ''highly recommended,'' ''recommended,'' ''not recommended,'' ''incomplete,'' or ''not eligible'' for each application based on the criteria set forth above. The Intermodal Review Team will provide its findings to the Program Office. The Program Office will use those findings to inform the recommendations that will be made to the Maritime Administrator and the Secretary.

3. FAPIIS Check

MARAD is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (*see* 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM. MARAD will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration Information

1. Federal Award Notices

Following the evaluation outlined in Section E, the Secretary will announce the selected grant award recipients. The award announcement will be posted on the MARAD website (*https://www.marad.dot.gov*).

2. Administrative and National Policy Requirements

All awards must be administered pursuant to the ''Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards'' found at 2 CFR part 200, as adopted by the Department at 2 CFR part 1201. Federal wage rate requirements included at 40 U.S.C. 3141–3148 apply to all projects receiving funds under this program and apply to all parts of the project, whether funded with Federal funds or non-Federal funds. Additionally, all applicable Federal laws and regulations will apply to projects that receive Marine Highway Grants.

MARAD and the applicant will enter into a written grant agreement after the applicant has satisfied applicable administrative requirements, such as environmental review requirements. The grant agreement is the fund-obligating document and will also describe the period of performance for the project as well as the schedule for construction or procurement. MARAD reserves the right to revoke any award of Marine Highway Grant funds and to award such funds to another project to the extent that such funds are not expended in a timely or acceptable manner and in accordance with the project schedule.

3. Reporting

Award recipients are required to submit quarterly reports, signed by an officer of the recipient, to the Program Office to keep MARAD informed of all activities during the reporting period. The reports will indicate progress made, planned activities for the next reporting period, and a listing of any purchases made with grant funds during the reporting period. In addition, the report will include an explanation of any deviation from the projected budget and timeline. Quarterly reports will also contain, at a minimum, the following: A statement as to whether the award recipient has used the grant funds consistent with the terms contemplated in the grant agreement; if applicable, a description of the budgeted activities not procured by recipient; if applicable, the rationale for recipient's failure to execute the budgeted activities; if applicable, an explanation as to how and when recipient intends to accomplish the purposes of the grant agreement; and a budget summary showing funds expended since commencement, anticipated expenditures for the next reporting period, and expenditures compared to overall budget.

Grant award recipients will also collect information and report on the project's observed performance with respect to the relevant long-term outcomes that are expected to be achieved through the project. Performance indicators will not include formal goals or targets, but will include observed measures under baseline (pre-project) as well as post-implementation outcomes for an agreed-upon timeline, and will be used to evaluate and compare projects and monitor the results that grant funds achieve to the intended long-term outcomes of the AMHP. Performance reporting continues for several years after project construction is completed, and MARAD does not provide Marine Highway Grant funding specifically for performance reporting.

4. Requirements for Domestic Content (''Buy American,'' ''Buy America,'' and ''Cargo Preference'')

As expressed in Executive Orders 13788 of April 18, 2017 and 13858 of January 31, 2019, it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in the United States in the terms and conditions of Federal financial assistance awards. Consistent with the requirements of Section 410 of Division G—Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2019, of the Consolidated Appropriations Act, 2019, (Pub. L. 116–6, February 15, 2019), the Buy American requirements of 41 U.S.C. Chapter 83 apply to funds made available under this Notice, and all award recipients must apply, comply with, and implement all provisions of the Buy American Act and related provisions in the grant agreement when implementing Marine Highway Grants. Depending on other funding streams, the project may be subject to separate ''Buy America'' requirements.

If a project intends to use any product with foreign content or of foreign origin, this information should be listed and addressed in the application. Applications should expressly address how the applicant plans to comply with domestic-preference requirements and whether there are any potential foreign-content issues with their proposed project. Applications that use grant funds for domestic-content purchases will be viewed favorably. If certain foreign content is granted an exception or waiver from Buy American or Buy America requirements, a Cargo Preference requirement may apply.

G. Federal Awarding Agency Contacts

To ensure applicants receive accurate information about eligibility, the program, or in response to other questions, applicants are encouraged to contact MARAD directly, rather than through intermediaries or third parties. Please see contact information in the **FOR FURTHER INFORMATION CONTACT** section above.

* * * * *

Dated: June 11, 2019.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2019–12580 Filed 6–13–19; 8:45 am]

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Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Parts 438, 440 and 460

45 CFR Parts 86, 92, 147, et al.

Nondiscrimination in Health and Health Education Programs or Activities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Parts 438, 440, and 460

Office of the Secretary

45 CFR Parts 86, 92, 147, 155, and 156

[Docket No.: HHS–OCR–2019–0007]

RIN 0945–AA11

Nondiscrimination in Health and Health Education Programs or Activities

AGENCY: Centers for Medicare and Medicaid; Office for Civil Rights (OCR), Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: The Department of Health and Human Services (''the Department'') is committed to ensuring the civil rights of all individuals who access or seek to access health programs or activities of covered entities under Section 1557 of the Patient Protection and Affordable Care Act. The Department proposes to revise its Section 1557 regulation in order to better comply with the mandates of Congress, address legal concerns, relieve billions of dollars in undue regulatory burdens, further substantive compliance, reduce confusion, and clarify the scope of Section 1557 in keeping with pre-existing civil rights statutes and regulations prohibiting discrimination on the basis of race, color, national origin, sex, age, and disability.

DATES: Submit comments on or before August 13, 2019.

ADDRESSES: You may submit comments to this proposed rule, identified by RIN 0945–AA11, by any of the following methods:

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov* by searching for the Docket ID number HHS–OCR–2019–0007. Follow the instructions at *http://www.regulations.gov* online for submitting comments through this method.
- *Regular, Express, or Overnight Mail:* You may mail comments to U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Section 1557 NPRM, RIN 0945–AA11, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.
- *Hand Delivery/Courier:* You may hand deliver comments to the U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Section 1557 NPRM, RIN 0945–AA11, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.

All comments received by the methods and due date specified above will be posted without change to *http://www.regulations.gov,* including any personal information provided, and such posting may occur before or after the closing of the comment period.

We will consider all comments received by the date and time specified in the **DATES** section above, but, because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to provide individual acknowledgements of receipt.

Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays. Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the mail drop slots located in the lobby of the building. Electronic comments with attachments should be in Microsoft Word or Excel; however, we prefer Microsoft Word.

Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Docket: For complete access to background documents or posted comments, go to *http://www.regulations.gov* and search for Docket ID number HHS–OCR–2019–0007.

FOR FURTHER INFORMATION CONTACT: Luben Montoya, Supervisory Civil Rights Analyst, HHS Office for Civil Rights at (800) 368–1019 or (800) 537–7697 (TDD).

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I. Executive Summary

A. Background on Section 1557 and Its Rulemaking

Section 1557 of the Patient Protection and Affordable Care Act (''PPACA'') [1] prohibits discrimination on the basis of race, color, national origin, sex, age, or disability under any health program or activity that receives Federal financial assistance, or under any program or activity that is administered by an executive agency under Title I of the PPACA or by an entity established under such Title. Section 1557 cites Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) (''Title VI''), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) (''Title IX''), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) (''Age Act''), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (''Section 504'').[2] It further states that ''[t]he enforcement mechanisms provided for and available'' under those laws ''shall apply for purposes of violations'' of Section 1557.[3]

Section 1557 authorizes, but does not require, the Secretary of Health and Human Services (''Secretary'') to promulgate regulations implementing Section 1557's nondiscrimination requirements.[4]

On August 1, 2013, the Department issued a Request for Information (RFI) soliciting input on regulations under Section 1557. 78 FR 46558. Thereafter, on September 8, 2015, the Department issued a Notice of Proposed Rulemaking (NPRM) to add a new part 92 to Title 45 of the Code of Federal Regulations and thereby impose numerous new requirements on covered entities.[5] 80 FR 54172.

On May 18, 2016, the Department finalized its proposed regulations for Section 1557 in 45 CFR part 92 (the ''Final Rule,'' ''current rule,'' or the ''Section 1557 Regulation''). 81 FR 31376.[6] As noted above, Section 1557 bars discrimination on grounds prohibited under several civil rights statutes, including on the ground of sex under Title IX of the Education Amendments of 1972. In its Section 1557 Regulation, the Department defined discrimination ''on the basis of sex'' to cover, among other things, discrimination on the basis of sex stereotyping, gender identity, and termination of pregnancy, but explicitly declined to include discrimination on the basis of sexual orientation. 81 FR 31390 (''OCR has decided not to resolve in this rule whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination.''). As explained more fully below, the Final Rule, among other things, imposed specific requirements regarding language assistance services, multi-language ''taglines,'' and nondiscrimination notices.

The Department estimated that, collectively, the Final Rule's new requirements, backed by the threat of enforcement action, would cost health care providers and other covered entities over $942.5 million in the first five years of implementation. 81 FR 31459.

The Final Rule became effective on July 18, 2016, except to the extent that the Rule required changes to health insurance or group health plan benefits or benefit design, in which case the Final Rule applied on the first day of the first plan year that began on or after January 1, 2017. 45 CFR 92.1.

On January 20, 2017, the President issued E.O. 13765 ''Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,'' that requires, among other things, ''[t]o the maximum extent permitted by law, the Secretary of Health and Human Services . . . shall exercise all authority and discretion available to [ ] waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [PPACA] that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications.'' 82 FR 8351 (Jan. 24, 2017).

[1] Patient Protection and Affordable Care Act, Public Law 111–148, sec. 1557, 124 Stat. 119, 260 (Mar. 23, 2010) (codified at 42 U.S.C. 18116). In this Notice of Proposed Rulemaking, we refer interchangeably to Section 1557 and 42 U.S.C. 18116.

[2] While Section 1557 does not incorporate nondiscrimination provisions by reference to Title VII, it provides that nothing in Title I of the PPACA is to be construed as invalidating or limiting the rights, remedies, procedures, or legal standards available under certain civil rights laws, and mentions Title VII specifically. 42 U.S.C. 18116(b).

[3] 42 U.S.C. 18116(a).

[4] 42 U.S.C. 18116(c).

[5] *See* 45 CFR 92.4 (''Covered entity means: (1) An entity that operates a health program or activity, any part of which receives Federal financial assistance; (2) An entity established under Title I of the PPACA that administers a health program or activity; and (3) The Department.'').

[6] The Final Rule was later revised on July 18, 2016, when the Department issued a technical correction deleting an incorrect toll-free telephone number to call the Department to file a civil rights complaint. 81 FR 46613 (July 18, 2016).

B. Litigation Challenging the Section 1557 Regulation

Lawsuits challenging the regulations followed promulgation of the Final Rule. On August 23, 2016, the States of Texas, Wisconsin, Nebraska, Kentucky, and Kansas, along with three private health care providers, filed a complaint in the U.S. District Court for the Northern District of Texas challenging the Section 1557 Regulation. *See Franciscan Alliance, Inc., et al.* v. *Burwell, et al.,* 227 F. Supp. 3d 660 (N.D. Tex. 2016). The complaint stated that, ''by redefining a single word used in the Affordable Care Act . . . HHS has created a massive new liability for thousands of healthcare professionals unless they cast aside their medical judgment and perform controversial and even harmful medical transition procedures.'' Complaint, *Franciscan Alliance, Inc., et al.* v. *Burwell, et al.,* No. 7:16–cv–00108–O (N.D. Tex. Aug. 23, 2016). Two other cases with similar objections were filed in the U.S. District Court for the District of North Dakota. *Religious Sisters of Mercy, et al.* v. *Burwell, et al.,* No. 3:16–cv–386 (D.N.D. filed Nov. 7, 2016); *Catholic Benefits Association, et al.* v. *Burwell, et al.,* No. 3:16–cv–432 (D.N.D. filed Dec. 28, 2016).[7]

On December 31, 2016, the U.S. District Court in *Franciscan Alliance* issued a nationwide preliminary injunction against the Department, barring it from enforcing the Section 1557 Regulation's prohibition against discrimination on the basis of ''gender identity'' and ''termination of pregnancy.'' 227 F. Supp. 3d at 696. The district court held that the Department had adopted an erroneous interpretation of ''sex'' under Title IX, and that the regulation was also arbitrary and capricious for failing to incorporate Title IX's religious and abortion exemptions. *Id.* The district court concluded that the Department's interpretation was not entitled to deference under *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), because ''the meaning of sex in Title IX unambiguously refers to the biological and anatomical differences between male and female students as determined at their birth.'' 227 F. Supp. 3d at 687 (citations omitted).

The *Franciscan Alliance* district court also held that plaintiffs had established a likelihood of success on the merits of their claims that the Department had violated the Administrative Procedure Act (APA) and the Religious Freedom Restoration Act (RFRA). *Id.* at 693. Regarding the RFRA claim, the district court found that HHS had not demonstrated a compelling interest in enforcing the regulation against the plaintiffs. *Id.* at 696. And even if the Department had demonstrated that compelling interest, the court held that the Department failed to show that its interest could not be pursued through less restrictive means for providing access to, and coverage for, services related to gender dysphoria. *Id.* at 693. The U.S. District Court for the District of North Dakota found the *Franciscan Alliance* order to be ''thorough and well-reasoned,'' and on that basis temporarily stayed enforcement of Section 1557's prohibitions against discrimination on the bases of gender identity and termination of pregnancy against the named plaintiffs in that court's two consolidated cases.[8]

On July 10, 2017, the *Franciscan Alliance* court stayed proceedings to allow time for agency reconsideration, finding that the preliminary injunction order ''provides sufficient guidance for HHS's review of the Rule.''[9] The U.S. District Court for the District of North Dakota also further stayed the proceedings in its two cases on July 10, 2017 and on August 24, 2017.[10] Neither the previous Administration nor the current one appealed the nationwide preliminary injunction, or the orders in *Franciscan Alliance, Religious Sisters of Mercy,* or *Catholic Benefits Association,* staying proceedings. On May 2, 2017, the Department of Justice (DOJ) moved the Northern District of Texas for a voluntary remand and stay to allow HHS to ''reassess the reasonableness, necessity, and efficacy of the two aspects of the [Section 1557] regulation that are challenged'' in litigation.[11] DOJ filed a similar motion with the District of North Dakota later that month.[12]

On July 10, 2017, the *Franciscan Alliance* court stayed proceedings to allow time for agency reconsideration, finding that the court's preliminary injunction order ''provides sufficient guidance for HHS's review of the Rule.''[13] The district court in North Dakota similarly stayed proceedings on August 24, 2017, in order to allow HHS ''to reconsider the controversial rules and regulations at issue.''[14]

On February 4, 2019, the plaintiffs in the *Franciscan Alliance* case filed briefs in support of their renewed motions for summary judgment. On April 5, 2019, DOJ filed a brief in response to plaintiffs' motion summary judgment on behalf of HHS,[15] stating that ''the relevant provisions of Title IX and Section 1557 unambiguously exclude gender-identity discrimination.'' *Id.* at 14. In this brief, DOJ stated the position of the U.S. Government on the meaning of ''sex'' under Title VII of the Civil Rights Act, Title IX of the Education Amendments of 1972, and Section 1557 of PPACA. DOJ stated, ''Since the [Section 1557 Final] Rule was issued, the United States has returned to its longstanding position that the term 'sex' in Title VII does not refer to gender identity, and there is no reason why Section 1557, which incorporates Title IX's analogous prohibition on 'sex' discrimination, should be treated differently.'' *Id.* at 6. Therefore, DOJ concluded, ''the [Final] Rule's prohibitions on discrimination on the basis of gender identity and termination of pregnancy conflict with Section 1557 and thus are substantively unlawful under the APA.'' *Id.* DOJ continued, ''[t]he [Final] Rule also fails to incorporate Title IX's exemptions despite Section 1557's directive to the contrary, thereby prohibiting conduct the statute permits.'' *Id.*

While it reconsiders its Section 1557 Regulation through the rulemaking process, the Department continues to abide by the preliminary injunction, which remains in place.

C. Summary of the Proposed Rule

In order to better comply with the mandates of Congress, address legal concerns, relieve billions of dollars in undue regulatory burdens, further substantive compliance, reduce confusion, and clarify the scope of Section 1557, the Department proposes to make substantial revisions to the Section 1557 Regulation and to eliminate provisions that are inconsistent or redundant with pre-existing civil rights statutes and

[7] *Religious Sisters of Mercy, et al.* v. *Burwell, et al.,* No. 3:16–cv–386; *Catholic Benefits Association et al.,* v. *Burwell, et al.,* No. 3:16–cv–432 (D.N.D. order of Jan. 23, 2017, consolidating North Dakota cases).

[8] *Religious Sisters of Mercy, et al.* v. *Burwell, et al.,* Nos. 3:16–cv–386 & 3:16–cv–432 (D.N.D. Order of January 23, 2017).

[9] *Franciscan Alliance,* No. 7:16–cv–00108–O (filed July 10, 2017).

[10] *Religious Sisters of Mercy, et al.* v. *North Dakota* v. *Burwell, et al.,* No. 3:16–cv–386 (D.N.D. Order filed on July 10, 2017; *Catholic Benefits Association* v. *Burwell,* No. 3:16–cv–432 (D.N.D. Order filed Aug. 24, 2017).

[11] *See* Defendant's Motion, *Franciscan Alliance,* No. 7:16–cv–00108–O (filed May 2, 2017).

[12] Defendant's Motion, *Religious Sisters of Mercy,* No. 3:16–cv–386 (filed May 26, 2017).

[13] *Franciscan Alliance,* No. 7:16–cv–00108–O (filed July 10, 2017).

[14] *Religious Sisters of Mercy,* No. 3:16–cv–432 (order of Aug. 24, 2017).

[15] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O (filed April 5, 2019).

regulations prohibiting discrimination on the basis of race, color, national origin, sex, age, and disability. In addition, to resolve confusion raised by the Section 1557 Regulation's reliance on an outdated version of the Department's Title IX regulation, the Department proposes to amend its Title IX regulation to implement statutory amendments made by Congress to Title IX in 1988.[16]

The proposed rule would retain the obligation imposed on covered entities to submit assurances of compliance, certain provisions concerning language access for individuals with limited English proficiency (LEP), and certain provisions ensuring access for individuals with disabilities. The proposed rule would empower the Department to continue its robust enforcement of civil rights laws prohibiting discrimination on the basis of race, color, national origin, sex, age, or disability in Department-funded health programs or activities, and would make it clear that such civil rights laws remain in full force and effect.

The Department further proposes to make limited conforming amendments to ten provisions in relevant Department regulations.

D. Cost-Effective Design of the Proposed Rule

The proposed rule would be an economically significant deregulatory action. The Department projects that the proposed rule would result in approximately $3.6 billion in cost savings (undiscounted) over the first five years after finalization. The Department anticipates that the largest proportion of these estimated savings would result from repealing the Section 1557 Regulation's provisions related to mandatory notices. Specifically, the proposed rule would repeal requirements on covered entities to mail beneficiaries, enrollees, and others, notices concerning non-discrimination and the availability of language assistance services (in 15 languages) with every ''significant'' publication and communication larger than a postcard or brochure. The Department projects additional savings from eliminating the requirement for OCR to weigh the presence or absence of language access plans, and from repealing provisions that duplicate disability and sex discrimination regulatory requirements concerning covered entities establishing grievance procedures. The Department estimates that there will be some additional costs to covered entities regarding training and revision of policies and procedures if the proposed regulation is finalized.

The Department believes that the anticipated benefits—which include compliance with Federal law, appropriate respect for the roles of Federal courts and Congress, and reduction or elimination of ineffective, unnecessary, or confusing provisions—far outweigh any costs or burdens that may arise from the proposed changes.

II. Reasons for the Proposed Rulemaking

Section 1557 does not require any implementing regulations, but incorporates and builds on the existing civil rights framework of Title VI, Title IX, Age Act, and Section 504 by making the nondiscrimination requirements of such laws applicable to certain health programs or activities and related entities to the extent they do not already apply to such programs or activities. With this background in mind, the Department has decided to substantially revise the Section 1557 Regulation for several reasons.

The Department believes that the Final Rule exceeded its authority under Section 1557, adopted erroneous and inconsistent interpretations of civil rights law, caused confusion, and imposed unjustified and unnecessary costs. As stated in the *Franciscan Alliance* litigation, ''the Rule's prohibitions of discrimination on the basis of gender identity and, without the accompanying statutory protections, termination of pregnancy are substantively unlawful under the APA.'' [17] The existence of lawsuits and court orders blocking enforcement of significant parts of the Final Rule for over two years indicates that changes in the proposed rule may minimize litigation risk.

For all these reasons, the Department proposes to exercise its discretionary regulatory authority to revise the Section 1557 Regulation to implement Federal civil rights law consistent with the applicable statutes as passed by Congress. The Department believes these amendments would reduce the significant confusion and unjustified burdens caused by the Final Rule.

First, the Final Rule created inconsistencies with, and unnecessarily duplicated, the Department's long-standing existing civil rights regulations. *See* 45 CFR parts 80 and 81 (Title VI), 84 and 85 (Section 504), 86 (Title IX), 90 and 91 (Age Act). Therefore, the Department proposes to repeal the provisions of the Final Rule that are confusing and redundant.

Second, the U.S. District Court for the Northern District of Texas preliminarily enjoined enforcement of parts of the Section 1557 Regulation because it found that the Department had exceeded its statutory authority.[18] The Department proposes this rule to address the overbroad interpretations, adopted in the current rule, of Section 1557 that were identified by the court and other Federal precedents. The Department also proposes to address the court's findings by incorporating, into the Department's implementing regulations, certain amendments to the statutes expressly identified by Congress in Section 1557.

Third, the Department estimates that the prior rulemaking did not anticipate or account for an annual burden of approximately $147 million (low-end) to $1.34 billion dollars (high-end), as further described in the Regulatory Impact Analysis of this proposed rule. The Department does not believe those burdens are justified by need, or by the benefits obtained by the rulemaking. In total, the proposed rule would relieve the American people of approximately $3.6 billion in unjustified costs over five years, while continuing to provide for vigorous enforcement of civil rights protections in health care. *See* Executive Order 13765, 82 FR 8351 (Jan. 20, 2017) (''Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal'').

As discussed below, the Department believes the repeal and replacement of significant portions of the Section 1557 Regulation would provide much needed finality, predictability, administrability, consistency, relief of burdens, and clarity, all of which would benefit covered entities, beneficiaries of Exchanges, and Department-funded or administered health programs or activities, the courts, and the general public.

In light of these determinations, through this proposed rule, the Department proposes to codify the longstanding application of the civil rights laws cited in Section 1557 to health programs or activities receiving Federal financial assistance or programs

[16] *See* Civil Rights Restoration Act of 1987, Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (amending Title IX). These proposed changes would better align HHS's regulations to the Title IX regulations adopted by other agencies and the position of the Department of Justice, the Federal civil rights coordinating authority under Executive Order 12250. *See* Executive Order 12250 on Leadership and Coordination of Nondiscrimination Laws, 45 FR 72995 (Nov. 2, 1980).

[17] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O at *5 (filed April 5, 2019).

[18] *See Franciscan Alliance,* 227 F. Supp. 3d at 696.

or activities administered by the Department under Title I of the PPACA or by entities established under such Title, both in terms of the protections those civil rights laws provide and the enforcement mechanisms they entail. This approach faithfully implements the Congressional mandate and seeks to avoid further litigation and uncertainty regarding the implementing regulations. The Department seeks comment on all of the provisions that are retained under this proposed rule, or that this rule proposes to repeal, amend, or add, including comment on whether provisions of the current Section 1557 Regulation that the Department does not propose to retain in this proposed rule, if any, are in keeping with Congress's mandate such that the Department should consider retaining them—and whether any of such provisions should be incorporated into the Department's regulations implementing the underlying civil rights laws.

A. Section 1557 of the PPACA Does Not Prevent or Limit Reconsideration of the Current Rule

Section 1557(c) states that the Secretary ''may'' promulgate implementing regulations. This language contrasts with the multiple other areas of Title I of the PPACA where Congress directed that the Secretary (or Secretaries) ''shall'' issue regulations. 42 U.S.C. 18116(c). Section 1557 accordingly authorizes, but does not require, the Secretary to implement the statute through regulation. That approach makes sense because ''Section 1557 builds on a landscape of existing civil rights laws.'' 78 FR 46559 (RFI) (Aug. 1, 2013). Section 1557 vests the Department with discretion to determine whether and to what degree implementing regulations are needed, and to revisit that determination, as appropriate, at a later date. *Encino Motorcars* v. *Navarro,* 146 S.Ct. 2117, 2125 (2016) (''Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change''). (*ConocoPhillips Co.* v. *U.S. E.P.A.,* 612 F.3d 822, 832 (5th Cir. 2010) (''[e]mbedded in an agency's power to make a decision is its power to reconsider that decision.''); *New England Power Generators Assn.* v. *FERC,* 879 F.3d 1192 (D.C. Cir. 2018) (''So long as any change is reasonably explained, it is not arbitrary and capricious for an agency to change its mind in light of experience, or in the face of new or additional evidence, or further analysis or other factors indicating that the agency's earlier decision should be altered or abandoned.''). Thus, an agency action to substantially repeal a prior rule, or parts thereof, is not necessarily subject to a higher standard of justification in the exercise of such discretion compared to the level of justification required under the prior rulemaking on a blank slate. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (''When an agency changes its existing position, it need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate. But the agency must at least display awareness that it is changing position and show that there are good reasons for the new policy.''). The agency's use of its rulemaking discretion in revisiting its original position is not, therefore, subject to a higher standard under the APA (5 U.S.C. 706); otherwise, agencies would be limited in their ability to revisit past regulations to cure defects or provide clarifications.

B. The Final Rule Adopted Novel and Inconsistent Legal Interpretations of Long-Standing Civil Rights Law

1. The Final Rule Interpreted the Scope of Section 1557 Too Broadly

The Department has now concluded that its existing Section 1557 Regulation impermissibly extends to programs and entities not covered by the text of the statute. With respect to the receipt of Federal financial assistance, the current rule defines ''health program or activity'' to cover ''all [ ] operations'' of entities principally engaged in providing or administering ''health services or health insurance coverage or other health coverage.'' 45 CFR 92.4. The scope of the regulation then includes all the operations of entities that provide ''health insurance coverage or other health coverage,'' whether or not they provide any health care.

The Civil Rights Restoration Act of 1987 (CRRA), however, defined ''program or activity'' for purposes of Title VI, Section 504 of the Rehabilitation Act, the Age Act, and Title IX to cover all operations of regulated entities only when they are ''*principally engaged* in the business of providing education, health care, housing, social services, or parks and recreation.'' Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (emphasis added). The ''business of providing . . . health care'' differs substantially from the business of providing health insurance coverage (or other health coverage) for such health care. Thus, the Final Rule goes beyond the CRRA by covering all the operations of entities that provide ''health insurance coverage or other health coverage'' and extends to those that are not principally engaged in the business of providing health care, and to those who provide no health care at all.[19] Moreover, the Department had not previously interpreted the CRRA to cover all the operations of health insurance providers under any of the antidiscrimination laws covered by the CRRA (Title VI, Title IX, the Age Act, and Section 504) until it promulgated the Section 1557 regulation—over a quarter century after the CRRA was passed—despite there being nothing in Section 1557 indicating any abrogation—or expansion—of the CRRA. Therefore, the Department is now proposing to clarify that health insurance programs administered by entities not principally engaged in providing health care will only be covered by the Rule to the extent those programs (as opposed those entities) receive Federal financial assistance from the Department.

2. The Final Rule Improperly Blended Substantive Requirements and Enforcement Mechanisms of the Underlying Statutes

The PPACA states that the ''enforcement mechanisms for and available under [ ] title VI, title IX, section 504, or such Age Discrimination Act shall apply,'' for purposes of enforcing Section 1557. 42 U.S.C. 18116(a). Interpreting this provision in 2015, a Federal court held ''Congress's express incorporation of the enforcement mechanisms from those four Federal civil rights statutes, as well as its decision to define the protected classes by reference thereto, manifests an intent to import the various *different* standards and burdens of proof into a Section 1557 claim, depending upon the protected class at issue.'' *Southeastern Pennsylvania* v. *Gilead,* 102 F. Supp. 3d 688, 698–99 (E.D. Pa. 2015) (emphasis added). *See also Briscoe* v. *Health Care Serv. Corp.,* 281 F. Supp. 3d 725, 738 (N.D. Ill. 2017) (''If Congress intended for a single standard to apply to all § 1557 discrimination claims, repeating the references to the civil-rights statutes and expressly incorporating their distinct enforcement mechanisms would have been a pointless (and confusing) exercise.'').

In interpreting and enforcing Section 1557 prior to the promulgation of the Final Rule—*i.e.,* from 2010 to 2016—the Department applied Title VI, Title IX, Section 504, and the Age Act regulations as independent authorities.

[19] The preamble to the Final Rule acknowledges the relevance of the CRRA, 81 FR at 31386, but does not explain how the provision of ''health care'' covers the provision of ''health insurance, even if only part of the health program or activity receives such assistance.''

However, contrary to the text of Section 1557, the Final Rule did not merely take existing protected classes and enforcement mechanism and apply them to health care programs or activities. Rather, it made certain individualized requirements, prohibitions, or enforcement mechanisms apply across all protected classes without sufficient statutory or regulatory support. This hodgepodge approach at times resulted in conflicts with precedents of the U.S. Supreme Court and lower Federal courts. *See* 81 FR 31387 (stating in the preamble of the Final Rule that there is ''a cognizable national origin discrimination claim under Title VI, Section 1557, and this part when the claim alleges that a covered entity's use of a facially neutral policy or practice related to citizenship or immigration status has a disparate impact on individuals of a particular national origin group''); *see also* 81 FR at 31440 (''OCR interprets Section 1557 as authorizing a private right of action for claims of disparate impact discrimination on the basis of any of the criteria enumerated in the legislation''); 81 FR 31405 (''OCR recognizes that discrimination based on health status, claims experience, medical history, or genetic information can, depending on the facts, have a disparate impact that results in discrimination on a basis prohibited by Section 1557 and will process complaints alleging such discrimination accordingly''). *But see Alexander* v. *Sandoval,* 532 U.S. 275, 282 (2001) (denying private rights of action for disparate impact theories under Title VI).

The Final Rule stated that an individual or entity may bring a civil action to challenge a violation of Section 1557 or of the regulation in Federal court. 45 CFR 92.302(d). The Department explained in the preamble to the Final Rule that private rights of action were available for Section 1557 claims against recipients of Federal financial assistance or State Exchanges for racial, national origin, sex, age, or disability discrimination. *See* 81 FR at 31440 (stating that ''both the proposed and the final rule specify that a private right of action is available under Section 1557'' and such actions are available ''on the basis of any of the criteria enumerated in the legislation''). Multiple Federal courts have held that Section 1557, or the statutes underlying it, do not permit private rights of action for disparate impact claims of discrimination on the basis of race [20] or sex,[21] and there is a split on the question with respect to disability, with one Federal appellate court holding that such private rights of action are not available and other Federal appellate courts holding that such private rights of action are available for claims of discrimination on the basis of disability.[22]

These judicial interpretations of Section 1557 relied on Congress's decision to include a rule of construction in Title IX stating that it does not require educational institutions to use preferential treatment based on a disparate impact basis,[23] and the U.S. Supreme Court's decisions precluding a right of action for disparate impact claims under Title VI.[24]

The Final Rule also stated that compensatory damages are available in appropriate administrative and judicial actions under the Section 1557 Regulation, 45 CFR 92.301(b), and the Department stated in its preamble that this was added ''to make clear in the regulation that compensatory damages are available. Our interpretation of Section 1557 as authorizing compensatory damages is consistent with our interpretations of Title VI, Section 504, and Title IX,'' 81 FR at 31440. However, the Department of Justice's Title VI Manual states that, under applicable Federal case law, compensatory damages are generally unavailable for claims based solely on an agency's disparate impact regulations.[25]

The Final Rule also newly extended provisions applicable only to some of the underlying civil rights laws to apply to all of the prohibited bases of discrimination under Section 1557. For example, although only the Section 504 (disability) and Title IX (sex) regulations prohibit recipients from perpetuating discrimination by providing significant assistance to any agency, organization, or person that discriminates, the Final Rule extended this prohibition to Title VI and Age Act claims under Section 1557.[26] The Section 1557 Regulation similarly extended the prohibition, in the Title VI, Section 504, and Age Discrimination Act regulations, on the utilization of criteria or methods of administration that have the effect of subjecting individuals to discrimination, to claims of discrimination on the basis of sex under Section 1557, although that prohibition is not included in the Title IX regulations.[27]

3. HHS Interpreted Federal Nondiscrimination Law Differently From Other Federal Agencies

Because Section 1557, Title VI, Title IX, Section 504, and the Age Act are cross-cutting civil rights laws enforced by multiple Federal agencies the Department's interpretation of these laws should be consistent with other interpretations within the Executive Branch.[28] By applying different

[20] *See Southeastern Pennsylvania Transp. Authority* v. *Gilead,* 102 F. Supp. 3d 688, 698–701 (E.D. Pa. 2015) (holding that Section 1557, incorporating Title VI, does not permit a private right of action for a disparate impact claim on the basis of race); *see also Alexander* v. *Sandoval,* 532 U.S. 275, 282–83 (2001).

[21] *See Condry* v. *UnitedHealth Group,* No. 17–cf–00183–VC (N.D. Calif. 2018) (''disparate impact claims on the basis of sex are not cognizable under section 1557''); *Weinreb* v. *Xerox Business Services,* 323 F. Supp. 3d 501, 521 (S.D.N.Y. 2018); *Briscoe* v. *Health Care Serv. Corp.,* 281 F. Supp. 3d 725, 738 (N.D. Ill. 2017); *York* v. *Wellmark, Inc.,* No. 4:16–cv–00627–RGE–CFB, at *15–16 (S.D. Iowa Sep. 6, 2017); *Southeastern Pennsylvania* v. *Gilead,* 102 F. Supp. 3d 688 (E.D. Pa. 2015).

[22] *Compare Crocker* v. *Runyon,* 207 F.3d 314, 321 (6th Cir. 2000); *Doe* v. *Bluecross Blueshield,* No. 2:17–cv–02793–TLP-cgc, 2018 WL 3625012 (W.D. Tenn. 2018); *and Briscoe* v. *Health Care Serv. Corp.,* 281 F. Supp. 3d 725, 738 (N.D. Ill. 2017), *with Valencia* v. *City of Springfield, Ill.,* 883 F.3d 959, 967 (7th Cir. 2018); *and Hollenbeck* v. *U.S. Olympic Comm.* 513 F.3d 1191, 1197 (10th Cir. 2008). To the Department's knowledge, no disparate impact claims on the basis of age have been filed under Section 1557 in a Federal court.

[23] 20 U.S.C. 1681(b) (Title IX ''[s]hall not [be] construe[d] to require an educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any Federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area.'').

[24] *Alexander* v. *Sandoval,* 532 U.S. 275, 282 (2001) (holding that private rights of action for disparate impact are not authorized by Title VI).

[25] DOJ Title VI manual, *https://www.justice.gov/crt/fcs/T6Manual9* (citing *Alexander* v. *Sandoval,* 532 U.S. 275, 282–83 (2001), *Barnes* v. *Gorman,* 536 U.S. 181, 187 (2002), and *Gebser* v. *Lago Vista Indep. Sch.,* 524 U.S. 274, 87 (1998)).

[26] *See* 45 CFR 84.4(b)(1)(v) (Section 504), 86.23(b)(7) (Title IX). *But see* 45 CFR 92.101(a)(4)(ii) (extended to age under Section 1557 Regulation), § 92.101(b)(1)(ii) (extended to race, color or national origin under Section 1557 Regulation).

[27] *See* 45 CFR 80.3(b)(2) (Title VI), 84.4(b)(4) (Section 504), 91.11(b) (Age Act). *But see* 45 CFR 92.101(b)(3)(ii) (extended to sex under Section 1557 Regulation).

[28] Pursuant to Executive Order 12250, the Attorney General has the responsibility to ''coordinate the implementation and enforcement by Executive agencies of (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*). (b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*). (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), (d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.'' Executive Order 12250 at sec. 1–2(b), 45 FR 72995 (Nov. 2, 1980). *See also* 42 U.S.C. 6103 (requiring each Federal department or agency to submit Age Act enforcement reports to and obtain approval of their Age Act regulations by HHS).

substantive requirements and enforcement mechanisms, as discussed above, HHS's Final Rule differed from other agencies' regulations on Title VI, Title IX, Section 504, and the Age Act. HHS's Section 1557 Regulation is limited in scope to HHS-funded or HHS-administered health programs, activities, and PPACA Title I entities, but Section 1557 of the PPACA applies to health programs or activities which receive Federal financial assistance from any Executive agency.[29] Although the then-OCR Director encouraged other agencies to adopt the standards in the Final Rule in 2016,[30] each agency has its own enforcement responsibility for the programs they fund that fall within Section 1557 jurisdiction. One agency's implementation and enforcement of a civil rights law that is inconsistent with other agencies would result in confusion for entities regulated by more than one agency and for the public as a whole, which is particularly imprudent given that Federal courts have implied the availability of monetary damages in private rights of action under the underlying civil rights statutes.[31]

4. The Final Rule Created New Provisions Concerning Language Access Not Adequately Justified by Law or Policy

Title VI prohibits discrimination against persons on the basis of national origin under any program or activity receiving Federal financial assistance. Under governing U.S. Supreme Court case law, Title VI obligates recipients of Federal financial assistance to provide individuals with limited English proficiency (LEP) meaningful access to Federally funded programs or activities.[32] In 2016, the Section 1557 Final Rule added certain language access provisions that were not required by Title VI case law or the underlying Title VI regulation.[33]

Additionally, the Final Rule introduced confusing and costly notice and tagline requirements that were not required by law, were inconsistent with tagline requirements required by other components of the Department and, as discussed further below, provided relatively minimal benefit to LEP individuals. Complicating matters further, because the Section 1557 Regulation applies only to health care programs or activities, a recipient of Federal financial assistance from the Department for health care services is subject to different notice and tagline requirements than a recipient receiving Federal financial assistance from the Department for human services alone, such as a child welfare agency.

Furthermore, the Final Rule newly required the OCR Director, in evaluating compliance, to take into account whether a recipient of Federal financial assistance has ''developed and implemented an effective written language access plan that is appropriate to its particular circumstances, to be prepared to meet its obligations'' under Section 1557. 45 CFR 92.201(b)(2). Before the promulgation of the Final Rule, an Executive Order directed Executive *agencies* to prepare language access plans applicable to their Federally conducted programs and activities (for example, the Veterans Administration's hospitals), but the Section 1557 provision applied to *recipients* of Federal financial assistance (for example, private hospitals accepting Medicaid). E.O. 13166, sec. 2, 65 FR 50121, 50121 (Aug. 16, 2000). The last section of the Executive Order also stated that it ''does not create any right or benefit, substantive or procedural, enforceable at law.'' 65 FR 50122.

5. The Final Rule's Definition of Discrimination ''On the Basis of Sex'' Has Been Enjoined by Federal Courts

In its Section 1557 Regulation, the Department interpreted the ''sex'' discrimination prohibited by Section 1557 to include discrimination on the basis of ''gender identity.'' 81 FR 31376, 31467 (definition of ''on the basis of sex,'' codified at 45 CFR 92.4). In particular, the Department took the view that one can identify as ''male, female, neither, or a combination of male and female'' and that this identification may differ from one's ''sex assigned at birth'' because, according to the regulation, gender identity ultimately relies on a subjective ''internal sense.'' 81 FR at 31467; 45 CFR 92.4 (definition of ''gender identity''). It then reasoned that Title IX's prohibition of discrimination on the basis of sex (as incorporated by Section 1557) includes discrimination on the basis of pregnancy termination,[34] sex stereotyping,[35] and gender identity.[36]

Interpreting Section 1557, through Title IX, to prohibit gender identity

[29] *Compare* 42 U.S.C. 18116(a) (stating that Section 1557 applies to ''any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by *an Executive Agency* or any entity established under this title (or amendments)'') (emphasis added) with 45 CFR 92.1 (stating that Part 92 applies to health programs or activities administered by recipients of Federal financial assistance from the *Department,* Title I entities that administer health programs or activities, and *Department*-administered health programs or activities) (emphasis added).

[30] Memorandum from OCR Director to Civil Rights Heads of Federal Agencies, Enforcement Responsibilities under Section 1557 of the Affordable Care Act (July 12, 2016), *https://www.hhs.gov/sites/default/files/directors-memo-july2016.pdf.*

[31] *Blunt* v. *Lower Merion Sch. Dist.,* 767 F.3d 247, 272 (3d Cir. 2014) (Title VI); *Franklin* v. *Gwinnett Cty. Pub. Sch.,* 503 U.S. 60 (1992) (Title IX).

[32] *Lau* v. *Nichols,* 414 U.S. 563 (1974) (interpreting Title VI in the Department of Health Education and Welfare's Title VI regulation). The Title VI statute does not expressly mention ''limited English proficiency.'' 42 U.S.C. 2000d *et seq. Lau* and its progeny relied on the word ''national origin'' in Title VI to encompass limited English proficiency (LEP).

[33] *See* 45 CFR parts 80 and 81 (the Department's Title VI regulations do not expressly reference LEP). *Lau* and subsequent case law interpreted the Title VI regulations' prohibition on recipients of Federal financial assistance ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination'' on the basis of national origin to require recipients to take reasonable steps to provide persons with limited English proficiency (LEP) meaningful access to Federally funded programs or activities. The Supreme Court has not specified what particular linguistic requirements may constitute ''meaningful access'' outside of the education context.

[34] The preamble to the Final Rule cites the Department's Title IX regulation, which contains provisions on termination of pregnancy, but does not analyze this regulatory language in light of Title IX's statutory provisions about abortion. *See* 81 FR at 31387 (citing 45 CFR 86.40(b)); *but see* 20 U.S.C. 1688 (''Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities related to an abortion . . .'').

[35] The Final Rule defines ''sex stereotypes'' as ''stereotypical notions of masculinity or femininity, including expectations of how individuals represent or communicate their gender to others, such as behavior, clothing, hairstyles, activities, voice, mannerisms, or body characteristics. These stereotypes can include the expectation that individuals will consistently identify with only one gender and that they will act in conformity with the gender-related expressions stereotypically associated with that gender. Sex stereotypes also include gender expectations related to the appropriate roles of a certain sex.'' 81 FR at 31468 (codified at 45 CFR 92.4).

[36] The Final Rule defines ''gender identity'' as ''an individual's internal sense of gender, which may be male, female, neither, or a combination of male and female, and which may be different from an individual's sex assigned at birth.'' 81 FR at 31467 (codified at 45 CFR 92.4). The Final Rule notes, in the definition, that ''the way an individual expresses gender identity is frequently called 'gender expression,' and may or may not conform to social stereotypes associated with a particular gender.'' *Id.* The definition also notes that ''[a] transgender individual is an individual whose gender identity is different from the sex assigned to that person at birth.'' *Id.* The regulation requires covered entities to treat individuals ''consistent with their gender identity'' except that covered entities ''may not deny or limit health services that are ordinarily or exclusively available to individuals of one sex, to a transgender individual based on the fact that the individual's sex assigned at birth, gender identity, or gender otherwise recorded is different from the one to which such health services are ordinarily or exclusively available.'' 45 CFR 92.206 and 92.207(b)(3).

discrimination was a relatively novel legal theory when the Department adopted the Final Rule. The theory, was not, and has not been, endorsed by the Supreme Court. *See, e.g., Baker* v. *Aetna,* 228 F. Supp. 3d 764, 768–69 (N.D. Texas 2017) (noting no controlling U.S. Supreme Court legal precedent recognizing gender identity as prohibited discrimination under Section 1557).

a. Background on Title IX of the Education Amendments

Title IX prohibits discrimination on the basis of sex in educational programs or activities that receive Federal financial assistance. Specifically, the statute states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. . . .'' 20 U.S.C. 1681. The statute uses the word ''sex'' but not ''sexual orientation'' or ''gender identity.'' Although it does not contain an express definition of the term ''sex,'' additional provisions in Title IX use explicitly binary terms such as ''men'' and ''women,'' ''father-son,'' ''mother-daughter,'' ''boys'' and ''girls,'' ''both sexes,'' and ''one sex'' and ''the other sex.'' [37]

Congressional activity in this area suggests that ''sex'' under Title IX does not include sexual orientation or gender identity. *See Food & Drug Admin.* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 122 (2000) (when ''Congress several times considered and rejected bills'' that would have granted the agency authority, Congress ''evidenced a clear intent to preclude a meaningful policymaking role for any administrative agency''). For example, in 2016, Senator Mazie Hirono introduced the Patsy T. Mink Gender Equity in Education Act, S. 3147 (114th Cong. 2016), to ''support educational entities so that such entities have the support to fully implement [T]itle IX'' and to define ''sex discrimination'' to include ''[a]ctual or perceived sex, sexual orientation, gender, or gender identity.'' *See also* H.R. 5682 (114th Cong. 2016) (companion measure introduced in the House of Representatives). However, there was no action on the Senate bill after it was referred to the Senate Committee on Health, Education, Labor and Pensions. Congress has repeatedly considered bills that would add the bases of sexual orientation or gender identity to other statutes that already prohibited discrimination on the basis of sex, but has done so in only limited instances.[38]

Over the past three decades, Members of Congress have repeatedly proposed to amend the Civil Rights Act to add the words ''sexual orientation'' and ''gender identity'' as prohibited bases of discrimination, but as of the date of publication of this proposed rule, such measures have never become Federal law.[39]

b. HHS's Title IX Regulations

In 1975, the predecessor to HHS (the Department of Health, Education, and Welfare (HEW)) became the first agency to adopt Title IX implementing regulations. 40 FR 24128 (June 4, 1975). The agency received and considered more than 9,700 comments before issuing its final regulations, and Congress held six days of hearings to determine whether the regulations were consistent with the statute.[40] The regulations,[41] like Title IX itself, included no explicit definition of ''sex.'' [42] Like Title IX, however, the Title IX regulations do use explicitly binary terms such as ''male and female'' (§ 86.41(c)) and ''one sex . . . [and] the other sex'' (*passim*).

When HHS interpreted ''on the basis of sex'' under Title IX through its Section 1557 regulation, HHS did not add the definition to its Title IX regulation. Neither did HHS amend its Title IX Regulation to adjust the references to ''male and female'' or ''one sex . . . [and] the other sex'' to conform to the novel definition in the Section 1557 regulation. *Compare* 81 FR 31467 (May 18, 2016) (Section 1557 Regulation) *with* 70 FR 24320 (May 9, 2005) (the last time HHS's Title IX regulations were amended).

c. Need for Consistency Among Components of HHS

Since 2012, other components of the Department adopted an interpretation of sex different from the definition OCR adopted in the Section 1557 Regulation. The Department's failure to address these other definitions in the Final Rule has resulted in substantial confusion and inconsistency.

In 2014, the National Institutes of Health (NIH) announced its policy that researchers seeking NIH grant funds should explain how differences between males and females on the basis of biology are factored into research designs, analyses, and reporting in clinical research as a biological variable.[43] This approach, according to NIH, acknowledged that research about male and female differences may be critical to the interpretation, validation, and generalizability of research findings and may inform clinical interventions. In 2017, NIH issued guidance to grant

[37] Although Congress did not include a definition of the term ''sex'', provisions in Title IX refer to ''men'' and ''women,'' ''father-son,'' ''mother-daughter,'' ''boys'' and ''girls,'' ''both sexes,'' and ''one sex'' and ''the other sex 42 U.S.C. 1681(a)(2) (''both sexes''), (a)(2) (''one sex'' and ''other sex''), (a)(6)(B) (''Men's'' and ''Women's''), (a)(6)(B) (''Boy'' and ''Girl''); (a)(7)(A) (''Boys'' and ''Girls''), (a)(7)(B)(i) (''Boys'' and ''Girls''), (a)(8) (''father-son'', ''mother-daughter''), and (a)(8) (''one sex'' and ''other sex''). *See also* 42 U.S.C. 1681(a)(2)(6) (''fraternity'' and ''sorority'').

[38] 18 U.S.C. 249(c)(4) (the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act prohibits hate crimes which are based on ''actual or perceived religion, national origin, gender, sexual orientation, gender identity, or disability''); 34 U.S.C. 12291(b)(13)(A) (the Violence Against Women Reauthorization Act (VAWA) prohibits discrimination on the basis of ''actual or perceived . . . sex, gender identity . . . [or] sexual orientation'').

[39] Over the past three decades, the Employment Non-Discrimination Act (ENDA) has been introduced ten times in the U.S. House of Representatives, but ENDA, which would prohibit employment discrimination on the basis of sexual orientation and gender identity, has never proceeded out of committee in the House. *See* H.R. 4636 (103rd Cong. 1994); H.R. 1863 (104th Cong. 1995); H.R. 1858 (105th Cong. 1997); H.R. 2355 (106th Cong. 1999); H.R. 2692 (107th Cong. 2001); H.R. 3285 (108th Cong. 2003); H.R. 2015 (110th Cong. 2007); H.R. 2981 (111th Cong. 2009); H.R. 1397 (112th Cong. 2011); H.R. 1755 (113th Cong. 2013). The Equality Act has similarly been introduced in three successive sessions of Congress. *See* H.R. 3185 (114th Cong. 2015); S. 1828 (114th Cong. 2015); H.R. 2282 (115th Cong. 2017); S. 1006 (115th Cong. 2017); H.R. 5 (116th Cong.) (introduced Mar. 3, 2019). It did not proceed out of committee in the 114th and 115th Congresses, and it passed the House of Representatives on May 17, 2019. The Equality Act would amend the Civil Rights Act to include ''gender identity'' and ''sexual orientation'' in addition to ''sex'' as prohibited grounds of discrimination, and would also include a definition of the terms ''sex'' and ''gender identity.''

[40] Subcommittee on Postsecondary Education of the House Committee on Education and Labor, Review of Regulations to Implement Title IX of Public Law 92–318 Conducted Pursuant to Sec. 431 of the General Education Provisions Act (94th Cong. June 17, 20, 23, 24, 25, 26, 1975); *see also* Title IX Common Rule, 65 FR 52857 (Sept. 29, 2000) (the HEW regulations were ''the result of an extensive public comment process and congressional review'').

[41] *See* 45 CFR part 86.

[42] Consistent with the statutory language, the Title IX regulations used the same binary and biological language about sexes as found in Title IX, including ''both sexes,'' ''the other sex,'' and ''boys'' and ''girls.'' *See* 45 CFR 86.2(s), 86.7, 86.17(b)(2), 86.21(c)(4), 86.31(c), 86.32(b)(2) and (c)(2), 86.33, 86.37(a)(3), 86.41(b) and (c), 86.55(a), 86.58(a) and (b), 86.60(b), and 86.61.

[43] Janine A. Clayton and Francis S. Collins, *Policy: NIH to balance sex in cell and animal studies,* Nature (May 14, 2014) (discussing disease-causing effects of Y-chromosome genes as different from X-chromosome genes, and intrinsic sex differences of female and male cells *in vitro*), *https://www.nature.com/news/policy-nih-to-balance-sex-in-cell-and-animal-studies-1.15195;* NIH, *Consideration of Sex as a Biological Variable in NIH-Funded Research,* NOT–OD–15–102 (June 9, 2015), *https://grants.nih.gov/grants/guide/notice-files/not-od-15-102.html.*

recipients about this policy [44] and continues to fund research that uses ''sex'' as a biological variable.[45] Using sex as a biological variable addresses binary male/female differences found to impact the practice of medicine by influencing proper diagnosis, prognosis, and treatment of patients.[46] Medical research prior to and subsequent to the Section 1557 Regulation have addressed differences between males and females as binary and biological.[47]

NIH also funded conferences of mental health professionals who developed the latest clinical manual on the diagnosis of ''gender dysphoria'' that defines ''sex'' (as distinct from ''gender identity'') in biological terms.[48] Specifically, the Diagnostic and Statistical Manual of Mental Disorders (DSM–5) provides, ''[t]his chapter employs constructs and terms as they are widely used by clinicians from various disciplines with specialization in this area. In this chapter, sex and sexual refer to the biological indicators of male and female (understood in the context of reproductive capacity), such as in sex chromosomes, gonads, sex hormones, and nonambiguous internal and external genitalia.'' [49]

Additionally, NIH requires research grant applicants to consider sex as a biological variable ''defined by characteristics encoded in DNA, such as reproductive organs and other physiological and functional characteristics.'' [50] According to an NIH article, ''[s]ex as a biological variable (SABV) is a key part of the new National Institutes of Health (NIH) initiative to enhance reproducibility through rigor and transparency. The SABV policy requires researchers to factor sex into the design, analysis, and reporting of vertebrate animal and human studies. The policy was implemented as it has become increasingly clear that male/female differences extend well beyond reproductive and hormonal issues. Implementation of the policy is also meant to address inattention to sex influences in biomedical research. Sex affects: Cell physiology, metabolism, and many other biological functions; symptoms and manifestations of disease; and responses to treatment. For example, sex has profound influences in neuroscience, from circuitry to physiology to pain perception. Extending beyond the robust efforts of NIH to ensure that women are included in clinical trials, the SABV policy also includes rigorous preclinical experimental designs that inform clinical research.''

In 2014, the Department's Office of Refugee Resettlement (ORR) published an Interim Final Rule [51] which adopted a biologically based definition of ''sex'' that was distinct from gender identity, to implement section 1101(c) of the Violence Against Women Reauthorization Act of 2013.[52] In setting forth standards and procedures to prevent, detect, and respond to sexual abuse and sexual harassment involving unaccompanied alien children in ORR's care provider facilities, the rule defines ''sex'' as ''a person's biological status and is typically categorized as male, female, or intersex.'' 45 CFR 411.5. The definition notes that ''[t]here are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.'' *Id.* The regulation gives a separate definition for ''gender identity'' as ''one's sense of oneself as a male, female, or transgender.'' *Id.* The rule then uses these terms differently, setting forth protections and policies concerning ''sex,'' distinct from those protections and policies concerning ''gender'' or ''gender identity.'' [53] The definitions section of the ORR regulation states '''Gender' refers to the attitudes, feelings, and behaviors that a given culture associates with a person's biological sex.'' 45 CFR 411.5 In the preamble to the rule, ORR added, ''This term ['gender'] is not to be confused with 'sex,' as defined [elsewhere in the rule].'' 79 FR at 77771.

In 2015, the Office of the National Coordinator for Health Information Technology (ONC) promulgated regulations [54] that included standards

[44] NIH Guidance, *Consideration of Sex as a Biological Variable in NIH-funded Research* (2017), *https://orwh.od.nih.gov/sites/orwh/files/docs/NOT-OD-15-102_Guidance.pdf.*

[45] Suk Kyeong Lee, *Sex as an important biological variable in biomedical research,* BMB Rep. 167 (Apr. 2018), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5933211;* Terry Lynn Cornelison, *Considering Sex as a Biomedical Variable in Biomedical Research,* Gender and the Genome (June 1, 2017), *https://journals.sagepub.com/doi/pdf/10.1089/gg.2017.0006;* Inna Belfer, J. White, *et al., Considering sex as a biological variable (SABV) in research: a primer for pain investigators,* The Journal of Pain (Mar. 2018), *https://www.jpain.org/article/S1526-5900(17)31024-6/pdf.*

[46] Janine A. Clayton, *Applying the new SABV (sex as a biological variable) policy to research and clinical care,* Physiology and Behavior (Aug 17, 2017), *https://doi.org/10.1016/j.physbeh.2017.08.012; see also* Leah R. Miller, Cheryl Marks, *et al., Considering sex as a biological variable in preclinical research,* 31 Federation of American Societies for Experimental Biology Journal 29–34 (Sept. 2017) (defining ''Sex'' as ''being XY or XX''), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6191005.*

[47] *See. e.g.,* Douglas C. Dean III, E.M. Planalp, *et al., Investigation of brain structure in the 1-month infant,* Brain Structure and Function 1–18 (Jan. 5, 2018), *https://www.ncbi.nlm.nih.gov/pubmed/29305647* (finding differences between male and female infants at the age of 1 month, ''[c]onsistent with findings from studies of later childhood and adolescence, subcortical regions appear more rightward asymmetric''); Wei Yang, Nicole M. Warrington, *et al., Clinically Important Sex differences in GBM biology revealed by analysis of male and female imaging, transcriptome and survival data,* Science Translational Medicine (Jan. 21, 2019), *https://www.ncbi.nlm.nih.gov/pubmed/30602536S* (identifying sex-specific molecular subtypes of glioblastoma); Stefan Ballestri, Fabio Nascimbeni, *et al., NAFLD as a Sexual Dimorphic Disease: Role of Gender and Reproductive Status in the Development and Progression of Nonalcoholic Fatty Liver Disease and Inherent Cardiovascular Risk,* Advances in Therapy (May 19, 2017), *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5487879;* Ester Serrano-Saiz, Meital Oren-Suissa, *et al., Sexually Dimorphic Differentiation of a C. elegans Hub Neuron Is Cell Autonomously Controlled by a Conserved Transcription Factor,* 27 Current Biology 199 (Jan. 5, 2017), *https://www.ncbi.nlm.nih.gov/pubmed/28065609;* Anke Samulowitz, Ida Gremyr, *et al., ''Brave Men'' and ''Emotional Women'': A Theory-Guided Literature Review on Gender Bias in Health Care and Gendered Norms towards Patients with Chronic Pain,* Pain Research and Management (Feb. 25, 2018), *https://www.ncbi.nlm.nih.gov/pubmed/29682130* (stating that ''the response to opioid receptor antagonists may generate a difference between men's and women's experiences of pain''); Susan Sullivan, Anna Campbell, *et al., What's good for the goose is not good for the gander: Age and gender differences in scanning emotion faces,* 72:3 Journals of Gerontology 441 (May 1, 2017), *https://www.ncbi.nlm.nih.gov/pubmed/25969472;* Ramona Stone and W. Brent Webber, *Male-Female Differences in the Prevalence of Non-Hodgkin Lymphoma,* 81 Journal of Environmental Health 16 (Oct. 2018).

[48] NIH sponsored thirteen scientific conferences that assisted in research evaluation by hundreds of mental health specialists for the American Psychiatric Association to produce the standard classifications of mental disorders of the *Diagnostic and Statistical Manual of Mental Disorders* Handbook of Differential Diagnosis (DSM–5).

[49] Although the Section 1557 Final Rule proposed to address insurance coverage for care related to gender dysphoria on the basis of a sex discrimination theory, neither the Notice of Proposed Rulemaking in 2015 nor the Final Rule in 2016 referenced the DSM–5's definition of the term ''sex.'' 81 FR 31429.

[50] NIH Guidance, *Consideration of Sex as a Biological Variable in NIH-funded Research* at 1 (2017), *https://orwh.od.nih.gov/sites/orwh/files/docs/NOT-OD-15-102_Guidance.pdf.*

[51] ORR Final Rule, Standards to Prevent, Detect, and Respond to Sexual Abuse and Sexual Harassment Involving Unaccompanied Children, 79 FR 77767 (Dec. 24, 2014).

[52] *See* 127 Stat. 61 (Violence Against Women's Act reauthorization).

[53] *Compare, e.g.,* 45 CFR 411.14 (''Care provider facilities must not search or physically examine a UC for the sole purpose of determining the UC's sex. If the UC's sex is unknown, it may be determined during conversations with the UC, by reviewing medical records, or, if necessary, learning that information as part of a broader medical examination conducted in private by a medical practitioner.'') *with* § 411.41(c) (''Only trained staff are permitted to talk with UCs to gather information about their sexual orientation or gender identity, prior sexual victimization, history of engaging in sexual abuse, mental health status, and mental disabilities for the purposes of the assessment required under paragraph (a) of this section.'').

[54] ONC Final Rule, 2015 Edition Health Information Technology (Health IT) Certification Criteria, 2015 Edition Base Electronic Health Record (EHR) Definition, and ONC Health IT Certification Program Modifications, 80 FR 62601

and requirements for coding certain health data. The regulations contained data sets for ''sex,'' separate from those for ''gender identity'' and ''sexual orientation.'' *See* 45 CFR 170.207(n) (''sex''); 170.207(o) (''sexual orientation and gender identity''). In its preamble, ONC explained that it did not adopt a separate category for ''assigned birth sex'' because ''we already require the capturing of birth sex as described under the ''sex'' section above.'' [55] Furthermore, ONC stated that questions about patients' gender identity and sexual orientation ''have not yet been scientifically validated for use in health care settings'' and, thus, it did not adopt them.[56] However, ONC added that, although not required, providers can separately code ''gender identity'' [57] and ''sexual orientation'' [58] if they opt to include such questions.[59]

OCR itself has adopted different interpretations of ''on the basis of sex'' under Section 1557. In 2012, the then-OCR Director announced in a letter [60] that OCR was accepting and investigating complaints of discrimination on the basis of ''actual or perceived sexual orientation or gender identity'' under Section 1557. Three years later, OCR changed its position and declined to include sexual orientation (unlike gender identity) as a *per se* protected class throughout the Section 1557 rulemaking process. *See* Proposed Rule, 81 FR 54176 (Aug. 15, 2015) (''Current law is mixed on whether existing Federal nondiscrimination laws prohibit discrimination on the basis of sexual orientation as a part of their prohibitions of sex discrimination''); Final Rule, 81 FR 31390 (May 18, 2016) (''OCR has decided not to resolve in this rule whether discrimination on the basis of an individual's sexual orientation status alone is a form of sex discrimination.''). It appears that OCR's letter in 2012 was the first time any HHS component departed from a binary and biological understanding of sex for purposes of sex discrimination and adopted a definition that included gender identity or sexual orientation.

d. Pending Federal Litigation Over Section 1557 Regulation, Title IX, and Title VII

In addition to *Franciscan Alliance* in the U.S. District Court for the Northern District of Texas and *Sisters of Mercy* in the U.S. District Court for the District of North Dakota, other Federal courts have gender identity discrimination cases, filed under Section 1557, pending on their dockets. *See Tovar* v. *Essentia Health,* 342 F. Supp. 3d 947 (D. Minn. Sept. 20, 2018) (on remand from 8th Cir.); *Boyden* v. *Conlin,* 341 F. Supp.3d 979 (W.D. Wis. 2018) (appealed to 7th Cir., No. 3:18–3408 and No. 18–3485, on Nov. 9, 2018); *Flack* v. *Wisconsin Department of Health Services,* 328 F. Supp.3d 931 (W.D. Wis. 2018) (pending motion for class certification); *Smith* v. *Highland Hospital of Rochester,* No. 17–CV–6781–CJS (W.D.N.Y. filed Oct 2, 2018) (appealed to 2d Circuit on Nov. 6, 2018); *Prescott* v. *Rady Children's Hospital-San Diego,* 265 F.Supp.3d 1090 (S.D. Cal. Sept. 27, 2017) (protective order granted on Nov. 6, 2018); *Edmo* v. *Idaho Dept. of Correction,* No. 1:17–cv–00151, 2018 WL 2745898 (D. Id. filed Oct. 9, 2018) (motion to stay pending February 13, 2019); *Enstad* v. *Peacehealth,* No. 2:17–cv–01496–RSM (W.D. Wash. filed Oct. 5, 2017) (granted stay of litigation on Sept. 24, 2018); *Robinson* v. *Dignity Health,* No. 16–CV–3035 YGR, 2016 WL 7102832 (N.D. Cal. filed Dec. 6, 2016) (on remand from U.S. Supreme Court).

Some Federal courts have declined to recognize gender identity discrimination claims under Title IX, and instead deferred to U.S. Supreme Court to settle the legal question. *See, e.g., Evancho* v. *Pine-Richland School District,* 237 F. Supp.3d 267, 299 (W.D. Pa. February 27, 2017) (''what makes the current legal landscape even more unsettled is that the Supreme Court is currently poised to grapple with these very issues''). While four appellate courts have addressed the issue,[61] a large volume of district court opinions have been inconsistent on the issue. *See Texas* v. *United States,* 201 F. Supp. 3d 810 (N.D. Tex. 2016) (holding that Title IX does not prohibit discrimination based on gender identity or transgender status); *Johnston* v. *Univ. of Pittsburgh,* 97 F. Supp. 3d 657 (W.D. Pa. 2015); *but see Adams* v. *School Board of St. Johns County,* 318 F. Supp. 3d 1293 (M.D. Fla. 2018) (recognizing gender identity discrimination claim under Title IX); *A.H.* v. *Minersville Area School District,* 290 F. Supp. 3d 321 (M.D. Pa. 2017). Appellate courts have also been split over the legal question whether discrimination on the basis of gender identity is prohibited by Title VII. *Compare Etsitty* v. *Utah Transit Auth.,* 502 F.3d 1215, 1220–1221 (10th Cir. 2007) *with Mitchell* v. *Kallas,* No. 15–cv–108 (7th Cir. 2018). On April 22, 2019, the U.S. Supreme Court granted three petitions for writs of certiorari, raising the question whether Title VII's prohibition on discrimination on the basis of sex also bars discrimination on the basis of gender identity or sexual orientation.[62] Because Title IX adopts the substantive and legal standards of Title VII,[63] a holding by the U.S. Supreme Court on the definition of ''sex'' under Title VII will likely have ramifications for the definition of ''sex'' under Title IX, and for the cases raising sexual orientation or gender identity claims under Section 1557 and Title IX which are still pending in district courts.[64]

(Oct. 16, 2015); *see also* 80 FR 76868 (Dec. 11, 2015) (making technical corrections and clarifications).

[55] 80 FR 62619. Requiring health care entities to code as male all persons who self-identify as male, regardless of biology, may lead to adverse health consequences. *See, e.g.,* Daphne Stroumsa, Elizabeth F.S. Roberts, *et al.,* ''The Power and Limits of Classification—A 32 Year Old Man with Abdominal Pain,'' *New England Journal of Medicine* (May 16, 2019), *https://www.ncbi.nlm.nih.gov/pubmed/31091369;* Marilynn Marchione, ''Blurred Lines,'' *Associated Press* (May 15, 2019), *https://apnews.com/b5e7bb73c6134d58a0df9e1cee2fb8ad* (identification of pregnant transgender person as male in medical records contributed to stillbirth of child).

[56] 80 FR at 62620.

[57] Options under the category ''gender identity'' were ''Male'', ''Female, transgender male/Trans man/Female-to-male,'' ''Transgender female/Trans woman/Male-to-female,'' ''Genderqueer, Neither exclusively male nor female,'' ''Additional gender category/(or other), please specify,'' or ''Decline to answer.''

[58] Options under the category ''sexual orientation'' were ''Straight or heterosexual,'' ''Lesbian, gay, or homosexual,'' ''Bisexual,'' ''Something else, please describe,'' or ''Don't know.''

[59] 80 FR 62620.

[60] See 81 FR 31387, n.57.

[61] *See, e.g., Doe ex rel. Doe* v. *Boyertown Area Sch. Dist.,* 893 F.3d 179 (3d Cir.), slip op. 23–31, *vacated on reh'g,* 897 F.3d 515 (3d Cir.), *and superseded by* 897 F.3d 518 (3d Cir. 2018); *Whitaker ex rel. Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034, 1046–54 (7th Cir. 2017), *cert. dismissed,* 138 S. Ct. 1260 (2018); *G.G. ex rel. Grimm* v. *Gloucester Cnty. Sch. Bd.,* 822 F.3d 709, 720–723 (4th Cir. 2016), *vacated and remanded,* 137 S. Ct. 1239 (2017); *Dodds* v. *U.S. Dept. of Education,* 845 F.3d 217 (6th Cir. 2016). Portions of two of these opinions have been vacated. *See Gloucester Cnty. Sch. Bd.* v. *G.G. ex rel. Grimm,* 137 S. Ct. 1239 (2017) (vacating court of appeals' decision in light of agency guidance); *Doe ex rel. Doe* v. *Boyertown Area Sch. Dist.,* 897 F.3d 518, 533–36 (3d Cir. 2018) (superseding opinion omitting portion of original opinion discussed in the petition, which was vacated on rehearing); *cf. Doe,* 893 F.3d 179, slip op. 23–31 (vacated opinion).

[62] *Bostock* v. *Clayton County,* 723 Fed. Appx. 964 (11th Cir. 2018), *cert granted,* No. 17–1618 (U.S. Apr. 22, 2019); *Altitude Express, Inc.* v. *Zarda,* 883 F.3d 100 (2d Cir. 2018), *cert granted,* No. 17–1623 (U.S. Apr. 22, 2019); *Equal Employment Opportunity Commission* v. *R.G. & G.R. Harris Funeral Homes, Inc.,* 884 F.3d 560 (6th Cir. 2018), *cert granted,* No. 18–107 (U.S. Apr. 22, 2019), *https://www.supremecourt.gov/orders/courtorders/042219zor_9olb.pdf.*

[63] *See* DOJ, Title IX Legal Manual (August 6, 2015), *https://www.justice.gov/crt/title-ix.*

[64] *Compare Etsitty* v. *Utah Transit Auth.,* 502 F.3d 1215 (10th Cir. Sept. 20, 2007) (Title IX does not prohibit gender identity discrimination); *and Texas* v. *United States,* 201 F. Supp. 3d 810 (N.D.

Continued

e. HHS's Inconsistency With Other Federal Agencies

From 1972 to the present, no Title IX regulation from any agency explicitly defined ''sex'' to include ''gender identity.'' All of the Title IX regulations of all agencies which adopted such regulations—including, as noted above, HHS's Title IX regulations—use the term in a binary and biological sense, and include phrases such as ''male and female,'' and ''one sex'' and ''the other sex.'' [65] Currently, HHS is the only Federal agency with a regulation defining ''sex'' under Title IX (in its Section 1447 Regulation) as inclusive of gender identity. However, starting in 2012, two other agencies—the Department of Justice (DOJ), and the Department Education (ED)—took enforcement actions, issued guidance, or took litigating positions that discrimination on the basis of sex under certain anti-discrimination statutes included ''gender identity.'' *See* ED, Office for Civil Rights, Questions and Answers in Title IX and Single Sex Elementary and Secondary Classes and Extracurricular Activities (2014); [66] ED and DOJ joint Dear Colleague Letter on Transgender Students (May 13, 2016) (Title IX guidance); Complaint, *United States* v. *McCrory,* No. 5:16–cv–238–BO (M.D.N.C. filed May 9, 2016) (DOJ Title IX lawsuit challenging a North Carolina law concerning transgender access to intimate facilities at State university). The Department proposed (and then finalized) its definition to be consistent with the policy positions, sub-regulatory guidance, and enforcement actions of ED and DOJ.[67]

The earlier interpretations have now been taken under review, dismissed, preliminarily enjoined, or revoked outright. *See Franciscan Alliance, Inc., et al.* v. *Burwell, et al.,* 227 F. Supp. 3d 660, 696 (N.D. Tex. 2016) (nationwide preliminary injunction against the Section 1557 regulation); *Texas, et al.* v. *United States, et al.,* 201 F. Supp. 3d 810, 836 (N.D. Tex. 2016) (preliminarily enjoining ED's Title IX interpretation); Dear Colleague Letter (Feb. 22, 2017) (ED and DOJ's withdrawal of the May 13, 2016 Dear Colleague Letter); Stipulated Joint Notice of Dismissal, *United States* v. *State of North Carolina,* No. 1:16–cv–425 (M.D.N.C. May 4, 2017) (dismissing, with prejudice, the DOJ lawsuit challenging the North Carolina law).

As noted above, in *Franciscan Alliance,* DOJ submitted a brief on behalf of HHS, in response to plaintiffs' motions for summary judgment, on April 5, 2019. The brief stated that Section 1557's prohibition on sex discrimination ''unambiguously excludes discrimination on the basis of gender identity.'' [68]

The Department proposes to repeal the novel definition of ''sex'' in the Section 1557 regulation in order to make the Department's regulations implementing Title IX through the Section 1557 Regulation more consistent with the Title IX regulations of other Federal agencies. The Department further believes this proposed rule avoids different interpretations of the same statute by multiple agencies, and promotes consistent expectations and enforcement.

f. Need for Consistency With the Department of Justice on Implementation and Enforcement of Nondiscrimination Laws

In 1980, the President delegated to the Attorney General the responsibility to lead the coordination of consistent and effective implementation of cross-cutting nondiscrimination laws, including Title VI, Title IX, and Section 504.[69] The Department, along with each other Executive Agency, is required to cooperate with DOJ and issue its implementing regulations consistent with the requirements prescribed by the Attorney General, unless prohibited by law.[70]

In court briefs and otherwise on behalf of the United States, DOJ has stated that the ordinary meaning of the word ''sex'' for purposes of Federal nondiscrimination laws does not encompass sexual orientation or gender identity. On April 5, 2019, DOJ filed a brief on behalf of HHS in the *Franciscan Alliance* case stating that ''the relevant provisions of Title IX and Section 1557 unambiguously exclude gender-identity discrimination.'' [71] Similarly, in a July 26, 2017 a*micus curiae* brief in a Second Circuit case regarding the prohibition of sex discrimination in employment under Title VII of the Civil Rights Act of 1964, DOJ stated, '' '[i]n common, ordinary usage in 1964—and now, for that matter—the word 'sex' means biologically *male* or *female.*' '' [72]

Consistent with this position, a few months later, the Attorney General issued a memorandum stating that '' 'sex' is ordinarily defined to mean biologically male or female'' and that ''Congress has confirmed this ordinary meaning by expressly prohibiting, in several other statutes, 'gender identity' discrimination, which Congress lists in addition to, rather than within, prohibitions on discrimination on the basis of 'sex' or 'gender.' '' [73] The memorandum concluded, ''Title VII's prohibition on sex discrimination encompasses discrimination between men and women but does not encompass discrimination based on gender identity *per se,* including transgender status. Therefore, as of the date of this memorandum . . . the Department of Justice will take that position in all pending and future matters . . . .''

DOJ also took that position on October 24, 2018, when it submitted a brief to the U.S. Supreme Court in another Title VII case in which a petition for a writ of certiorari was filed. DOJ argued that ''Title VII does not define the term 'sex,' so the term should 'be interpreted as taking [its] ordinary, contemporary, common meaning.' When Title VII was enacted in 1964, 'sex' meant biological sex; it 'refer[red] to [the] physiological distinction[ ]' between 'male and female.' Title VII thus does not apply to discrimination against an individual

Tex. Aug. 21, 2016) *with Doe ex rel. Doe* v. *Boyertown Area Sch. Dist.,* 893 F.3d 179 (3d Cir.), slip op. 23–31, *vacated on reh'g,* 897 F.3d 515 (3d Cir.), *and superseded by* 897 F.3d 518 (3d Cir. 2018); *Whitaker ex rel. Whitaker* v. *Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.,* 858 F.3d 1034, 1046–1054 (7th Cir. 2017) (interpreting Title IX and Equal Protection Clause), *cert. dismissed,* 138 S. Ct. 1260 (2018); *and G.G. ex rel. Grimm* v. *Gloucester Cnty. Sch. Bd.,* 822 F.3d 709, 720–723 (4th Cir. 2016), *vacated and remanded,* 137 S. Ct. 1239 (2017).

[65] *See, e.g.,* Department of Education Title IX regulation at 34 CFR 106.2(s), 106.7, 106.17(b)(2), 106.21(c)(4), 106.31(c), 106.32(b)(2) and (c)(2), 106.33, 106.37(a)(3), 106.41(b) and (c), 106.55(a), 106.58(a) and (b), 106.60(b), and 106.61; Department of Justice Title IX regulation at 28 CFR 54.105, 54.130, 54.230(b)(2), 54.235(b)(3), 54.300(c)(4), 54.400(c), 54.405(b)(2) and (c)(2), 54.410, 54.430(a)(3), 54.450(b) and (c)(2), 54.520(a), 54.535(a) and (b), 54.545(b), and 54.550. *See also* DOJ Coordination and Compliance Division, Title IX Regulations by Agency, *https://www.justice.gov/crt/fcs/Agency_Regulations#2.*

[66] *http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-ex201412.pdf.*

[67] *See* 81 FR at 31388–31389.

[68] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O, p. 11 (N.D. Tex, filed April 5, 2019).

[69] Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, Secs. 1–201(a) through (c), 45 FR 72995 (Nov. 2, 1980).

[70] Executive Order 12250 at Secs. 1–401 through 1–402.

[71] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O, p. 14 (N.D. Tex, filed April 5, 2019).

[72] *See also* DOJ Brief for the United States as *Amicus Curiae,* p. 4, in *Zarda* v. *Altitude Express, Inc.,* 883 F.3d 100 (2d Cir. July 26, 2017) (quoting dissent in *Hively* v. *Ivy Tech Community College,* 853 F.3d 339, 362 (7th Cir. 2017)); DOJ Brief in Support of Defendants' Motion to Dismiss at 2–6, *U.S. Pastor Council* v. *EEOC,* No. 4:18–cv–00824–O (N.D. Tex. Dec. 17, 2018).

[73] Memorandum of the Attorney General (Oct. 4, 2017), *https://www.justice.gov/ag/page/file/1006981/download.*

based on his or her gender identity. Notably, Congress has specifically prohibited discrimination based on 'gender identity' in other statutes, as a separate protected category in addition to 'sex' or 'gender.' It has not included similar language in Title VII as originally enacted in 1964 or in any amendment in the 54 years since.''[74]

Nevertheless, because the Section 1557 Regulation's gender identity provisions remain, public confusion persists. To ensure that its civil rights regulations are consistent with the views of the Department of Justice, other Federal agencies, and internally, the Department proposes to repeal the definition of ''on the basis of sex'' that had been adopted in its Section 1557 Final Rule. Because of the likelihood that the Supreme Court will be addressing the issue in the near future,[75] the Department declines, at this time, to propose its own, definition of ''sex'' for purposes of discrimination on the basis of sex in the regulation.

g. Sensitive Balancing of Competing Interests at the Local Level

The adoption of a definition of ''sex'' in the Section 1557 Regulation may stifle the ability of States, local governments, and covered entities to set their own policies and balance multiple competing interests on questions related to gender dysphoria. Because Title IX and Section 1557 get their constitutional authority from the Spending Clause, according to the Supreme Court, it is appropriate that it be exercised with respect for State sovereignty:

> [L]egislation enacted pursuant to the spending power is much in the nature of a contract: In return for federal funds, the States agree to comply with federally imposed conditions. The legitimacy of Congress' power to legislate under the spending power thus rests on whether the State voluntarily and knowingly accepts the terms of the ''contract.'' *See Steward Machine Co.* v. *Davis,* 301 U. S. 548, 585–598 (1937); *Harris* v. *McRae,* 448 U. S. 297 (1980). There can, of course, be no knowing acceptance if a State is unaware of the conditions or is unable to ascertain what is expected of it. Accordingly, if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously. *Cf. Employees* v. *Department of Public Health and Welfare,* 411 U. S. 279, 285 (1973); *Edelman* v. *Jordan,* 415 U. S. 651 (1974). By insisting that Congress speak with a clear voice, we enable the States to exercise their choice knowingly, cognizant of the consequences of their participation.

Pennhurst State School and Hospital v. *Halderman,* 451 U.S. 1, 17 (1981); *see also National Federation of Independent Business* v. *Sebelius,* 567 U.S. 519, 588 (2012) (''Congress has no authority to order the States to regulate according to its instructions. Congress may offer the States grants and require the States to comply with accompanying conditions, but the States must have a genuine choice whether to accept the offer'') (opinion of Roberts, C.J., joined by Breyer and Kagan, JJ.). The Department's broad reinterpretation of ''sex'' under Title IX affected States' ability to accept these restrictions knowingly as they came long after states became heavily reliant on the continued receipt of Federal funds subject to Title IX requirements.

This proposed rule would significantly restore the ability of States to establish policies in this area, based on their weighing the competing interests at stake. This proposed rule is not intended to remove any protection that Congress has provided by statute, including Title IX, or to deny States the ability to provide protections that exceed those required by Title IX. Rather, the proposed rule would ensure that the Department's Title IX and corresponding Section 1557 regulations follow the will of Congress with respect to the States by not expanding Title IX's definition of ''sex'' beyond the statutory bounds.

C. The Costs of the Final Rule Were Unnecessary and Unjustified

The Department has determined that the Section 1557 Regulation imposed substantially larger regulatory burdens than predicted, a result inconsistent with the policies of this Administration. In his first day in office, President Donald Trump issued Executive Order 13765, identifying it as Administration policy to ''minimize the unwarranted economic and regulatory burdens of the [Patient Protection and Affordable Care] Act, and prepare to afford the States more flexibility and control to create a more free and open healthcare market.'' This Executive Order states that ''the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the [PPACA] shall exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [PPACA] that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, [or] purchasers of health insurance.'' President Trump has also issued two further Executive Orders directing executive agencies to relieve the regulatory burden and reduce regulatory costs across the Federal government.[76]

1. The Section 1557 Regulation Imposed Substantially Higher Regulatory Costs Than Predicted

The Department has concluded, based on its independent assessment of the evidence, that the costs and burdens imposed by the Section 1557 Regulation are substantially larger than originally anticipated. The Final Rule requires covered entities to post and disseminate to beneficiaries, enrollees, and the public, detailed notices of nondiscrimination that include information on how individuals with disabilities may receive auxiliary aids and services and how LEP individuals may receive translated documents or oral interpretation. 45 CFR 92.7. The Department estimated that this notice requirement would impose approximately $3.6 million of costs in the first year of compliance and zero for the following four years. In calculating this cost, the Department counted the employee time required to initially download, print, and post notices in public areas, but did not count the recurring costs of paper, ink/toner, and additional postage for the required initial or subsequent mailings of these notices. 81 FR 31453, 31458.

The Final Rule additionally requires covered entities to provide to beneficiaries, enrollees, and others, ''taglines'' describing the availability of free language assistance services. The Final Rule requires these taglines be written in ''at least the top 15 languages'' spoken by LEP individuals in the relevant State or States. 45 CFR 92.8(d)(1). The Department estimated that the taglines requirement would cost the same as the notice of nondiscrimination requirement, namely, $3.6 million in the first year and zero over the following four years. 81 FR

[74] DOJ, Brief for the Federal Respondent in Opposition to Petition for Writ of Certiorari in *R.G. & G.R. Harris Funeral Homes, Inc.* v. *Equal Employment Opportunity Commission, et al.,* No. 18–107, 16–18 (Oct. 2018) (citations omitted).

[75] *See Bostock* v. *Clayton County,* 723 Fed. Appx. 964 (11th Cir. 2018), *cert granted,* No. 17–1618 (U.S. Apr. 22, 2019); *Altitude Express, Inc.* v. *Zarda,* 883 F.3d 100 (2d Cir. 2018), *cert granted,* No. 17–1623 (U.S. Apr. 22, 2019); *Equal Employment Opportunity Commission* v. *R.G. & G.R. Harris Funeral Homes, Inc.,* 884 F.3d 560 (6th Cir. 2018), *cert granted,* No. 18–107 (U.S. Apr. 22, 2019), *https://www.supremecourt.gov/orders/courtorders/042219zor_9olb.pdf.*

[76] Executive Order 13771 on Reducing Regulation and Controlling Costs (Jan. 30, 2017); Executive Order 13777 on Enforcing the Regulatory Reform Agenda (Feb. 24, 2017); *see also* Executive Order 13563 on Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011).

31453, 31458. Again, as with notices, the Department counted the employee time required to initially download, print, and post taglines, but did not count the recurring costs of paper, ink/toner, and additional postage for the required initial or subsequent mailings of taglines. 81 FR 31453.

The Department did not fully appreciate the volume of mail inserts the combined notice and tagline provisions would require. The Final Rule requires notices of nondiscrimination and taglines be appended to all ''significant'' publications and communications (bigger than a postcard or brochure) sent by covered entities to beneficiaries, enrollees, applicants, or members of the public. 45 CFR 92.8(f)(1). The Final Rule's preamble explained that ''significant communications'' include ''not only documents intended for the public . . . but also written notices to an individual, such as those pertaining to rights or benefits.'' 81 FR 31402. Many health insurance issuers reasonably interpreted the Section 1557 Regulation as requiring that they provide the notice and taglines to their subscribers in nearly every written communication, including every time the issuer processes a claim and, as a consequence, issues a beneficiary an Explanation of Benefits.

Many of these matters were discussed in DOJ's 2002 and HHS's 2003 LEP guidance documents. The LEP guidance documents flagged concerns about ''unrealistic'' interpretations of translating written materials into languages when recipients serve communities in large cities or across the country and serve LEP persons who speak dozens and sometimes over 100 different languages. 67 FR 41455, 41463 (June 18, 2002) (DOJ guidance); 68 FR 47311, 47319 (Aug. 8, 2003) (HHS guidance). Furthermore, with the recognition that there could be large numbers of documents in need of translation into dozens of languages, the LEP guidance documents advised that recipients could start with several of the more frequently encountered languages and set benchmarks for continued translations into the remaining languages over time. 67 at 41463 (DOJ); 68 FR at 47319 (HHS). By contrast, the Section 1557 Regulation set an effective date of July 18, 2016—only 60 days after promulgation of the final rule. The Section 1557 Regulation used the vague term ''significant'' to identify documents to which providers must append translated tagline notices. *See* 45 CFR 92.8(g). However, the Department's long-standing LEP guidance discussed translation of ''vital'' documents, with the acknowledgement that ''[c]lassifying a document as vital or non-vital is sometimes difficult'' because the health care context is so fact-specific, depending on ''the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner.'' 68 FR at 47318 (HHS guidance).

In practice, the notices and taglines requirement results in the inclusion of one to two sheets of paper (which may be double-sided) per each significant communication mailed by a covered entity.

Data collected from covered entities, and the Department's independent analysis, illustrate the financial impact of the notice and tagline requirements. One covered health insurance issuer, which sends over 42 million Explanations of Benefits for one of its health plans to enrollees each year, states that it was required to add 2–5 pages of disclosure content to each letter or document, and estimates the incremental cost of printing, paper, and postage alone to be approximately $8 million per year.[77] That covered health insurance issuer also reported that another of its health plans, which communicates with enrollees 50 to 90 times per year, estimated that it is spending approximately $14 million annually on printing and postage for notice and tagline requirements.[78] A third plan reported that its costs for taglines were $802,000 for the last quarter of 2016 and were projected to be $2.4 million in 2017.[79] Another large plan estimates it will spend $4–5 million per year to comply with these requirements.[80]

A pharmacy benefit managers (PBM) trade association has reported similar effects of the Section 1557 Regulation. It estimates that PBMs process over three billion prescriptions per year, with each prescription requiring multiple ''significant'' communications be sent to beneficiaries (such as explanations of benefits, refill reminders, drug safety information, and other notices), many of which are sent by mail. The trade association estimates that this amounts to between 1 and 4.8 billion notices and taglines mailed per year at approximately $0.50 to $1 in additional printing and postage costs per communication. Thus, according to the trade association, these requirements have cost PBMs from $500 million to nearly $5 billion per year.[81] The high costs that health insurance issuers, health plans, and the members of a PBM trade association have reported about the costs resulting from the notice and tagline provisions of the Final Rule prompted the Department to reevaluate the requirement and its associated benefits and burdens.

As discussed further in the Regulatory Impact Analysis of this proposed rule, and based on the Department's independent analysis, the Department concludes that its original assessment of $7.2 million in one-time notice and tagline-related costs underestimated the actual costs associated with including nondiscrimination notices and taglines in significant communications and publications.

The Department now estimates that the burden from the notice and taglines requirement ranges from $147 million (low-end) to $1.34 billion dollars (high-end) in annual costs before accounting for electronic delivery, as described below. These estimates are a function of multiplying the low and high per-unit cost of including a nondiscrimination notice and tagline insert ($0.035/per unit to $0.32/per unit) by the volume of significant communications and publications to which covered entities are required to attach the notice and taglines. The Regulatory Impact Analysis explains the calculations underlying these estimates in detail. The Department uses an average of the low- and high-end estimates, and adjusts for electronic delivery, to arrive at an average savings of $0.632 billion per year which totals approximately $3.16 billion over five years. The Regulatory Impact Analysis explains the assumptions, rationale, and calculations for this weighted average.

2. The Section 1557 Regulation's Burdens Are Not Justified by Need

The Department does not believe that the regulatory burdens of the Section 1557 Regulation, either as originally anticipated or as now more correctly estimated, are justified. The Department stated in the Final Rule that, apart from burdens related to the Final Rule's definition of discrimination ''on the basis of sex'' and provisions concerning language access plans,[82] ''we do not

[77] Source: Aetna health plan representatives (April 13, 2017).

[78] Source: Aetna health plan representatives (May 1, 2017).

[79] Source: Aetna (April 10, 2017).

[80] Source: UnitedHealth Group (April 10, 2017).

[81] Source: Pharmaceutical Care Management Association (May 2, 2017).

[82] Language access plans are meant to assist covered entities in fulfilling their obligations to provide LEP individuals meaningful access to services provided by the covered entity. Although the Final Rule did not require covered entities to

anticipate that covered entities will undertake new actions or bear any additional costs in response to the issuance of the regulation'' because the Final Rule applies ''pre-existing requirements'' that have applied to regulated entities ''for years.'' 81 FR 31446. Indeed, the Department noted in the preamble to the Final Rule that, following the passage of Section 1557 in 2010, the Department's Office for Civil Rights (OCR) complaint workload had increased only ''slightly.'' 81 FR 31458.

These facts call into question the need for both the $942 million in costs to the public over five years that the Department originally anticipated, 81 FR 31459, and the additional approximately $3.2 billion in notice and tagline compliance costs of which the Department is now aware.

Several factors suggest that the extraordinary burdens imposed by the notice and tagline requirements in particular are not justified by need. First, those requirements are difficult for covered entities to implement because of other differing and overlapping requirements already imposed by the Federal government (with respect to Federal health care programs such as Medicare), and by many States (with respect to State-regulated health insurance), concerning language access.[83]

Second, the Department has heard from multiple stakeholders that the repetitive nature of the notices and taglines in communications and publications dilutes the message contained in significant communications to the point that some recipients may be disregarding the information entirely.[84]

Third, the Department has learned that many beneficiaries of Federal and other health programs do not want to receive extra pages of information they have seen many times before out of environmental concerns or annoyance.[85] Aetna, one of the largest health insurance issuers in the United States, surveyed 322 enrollees by showing them a sample document with 4 pages of taglines; 75% of the enrollees reacted negatively (referring to the taglines as ''wasteful,'' ''confusing,'' ''unintelligible,'' ''incomprehensible,'' ''inefficient,'' among others), 50% said they would be less likely to carefully read documents from their insurer if they had taglines, and about one third said they would be less likely to open mail from an insurer if taglines were included in each document.[86]

Fourth, the Department has received little evidence of more beneficiaries seeking language assistance as a result of the requirements that caused these increased burdens. Health plans report, anecdotally, that there has been no increase in the number of calls to their language lines requesting oral interpretation or written translation services since the notice and tagline requirements became effective in October 2016.[87] One plan reported lower numbers after the tagline requirement—it received 98,800 calls during the period between January and March 2016, but only 91,800 during the same time period in 2017.[88] Since the Final Rule, some pharmacy benefit managers report having received a handful of calls to their anti-discrimination grievance line, some have noticed an increase in their translation line call volume, some have noticed no change in call volume, and others have seen a decrease, but they report that, as a group, they have received significantly more complaints about providing too many notices, as compared to requests for translation assistance.[89]

Fifth, the Department has found little evidence showing that repeatedly mailing all beneficiaries taglines with 15 or more languages is an efficient use of covered entities' resources when the overwhelming majority of beneficiaries speak English (with Spanish being a distant second). According to Census statistics, as of 2015, over three-quarters (79%) of the U.S. population over age 18 speaks only English at home, followed by Spanish (12.5%).[90] Additionally, of persons selecting a language preference when registering for coverage on the *HealthCare.gov* platform for 2017, 89.93% selected English, followed by 8.36% who selected Spanish.[91] This data suggests that, for the large majority of people who receive them, the required language tagline mailings provide little to no benefit (and potentially impose burdens) because they are already proficient English speakers with little need for, and no entitlement under the law to, translation services.

Sixth, confusion over the notices has resulted in an increased volume of mistaken inquiries on the Department's public phone line.[92] OCR's toll-free

develop a language access plan, the Rule stated that the development and implementation of a language access plan is a factor the Director ''shall'' take into account when evaluating whether an entity is in compliance with Section 1557. 45 CFR 92.201(b)(2). The Department anticipated that 50% of covered entities would develop and implement a language access plan following issuance of the Final Rule. 81 FR 31454.

[83] *E.g.,* 42 U.S.C. 300gg–15(b)(2) and 300gg–19(a)(1)(B) (requiring standards for ensuring that the Summaries of Benefits and Coverage and certain notices are provided in a culturally and linguistically appropriate manner); 42 U.S.C. 1396d(p)(5)(A) (requiring HHS to distribute to States an application form for Medicare cost-sharing in English and 10 non-English languages); 26 CFR 1.501(r)–4(a)(1), (b)(5)(ii) (requiring a hospital organization to translate certain documents, among other requirements, to qualify for a tax-exempt status with respect to a hospital facility); 42 CFR 422.2262(a)(1)–(2) and 422.2264(e) (setting forth Medicare Advantage marketing requirements, which include requiring Medicare Advantage organizations to translate marketing materials into non-English languages spoken by 5% or more of individuals in a plan service area), § 423.2262(a)(1)–(2) and § 423.2264(e) (setting forth Medicare Part D marketing requirements, which include requiring Part D plan sponsors to translate marketing materials into non-English languages spoken by 5% or more of individuals in a plan service area); 45 CFR 155.205(c)(2)(iii)(A) (Marketplaces must post taglines on their websites and include taglines in documents ''critical for obtaining health insurance coverage or access to health care services through a QHP''); 45 CFR 147.136(e)(2)(iii) and (e)(3), and 147.200(a)(5) (requiring taglines in languages in which 10% of individuals with limited English proficiency (LEP) county-wide are exclusively literate on internal claims and appeals notices and on an issuer's Summary of Benefits and Coverage); 42 CFR 435.905(b)(3) (requiring individuals to be ''informed of the availability of language services . . . and how to access . . . [them] through providing taglines in non–English languages indicating the availability of language services''); 42 CFR 457.340(a) (applying certain Medicaid requirements, including § 435.905(b)(3), which requires individuals to be ''informed of the availability of language services . . . and how to access . . . [them] through providing taglines in non–English languages indicating the availability of language services''); 210 Illinois Cons. Stat. 87/1 (Illinois Language Assistance Act).

[84] Sources: Aetna, ''Member Reactions to 1557 Taglines'' (Apr. 2017); American Health Insurance Plans and Blue Cross Blue Shield Association (May 5, 2017); Pharmaceutical Care Management Association (May 2, 2017).

[85] Sources: Aetna (May 1, 2017); Pharmaceutical Care Management Association (Mar. 27, 2017); American Health Insurance Plans and Blue Cross Blue Shield Association (May 5, 2017).

[86] Source: Aetna, ''Member Reactions to 1557 Taglines'' (Apr. 2017).

[87] Sources: Pharmaceutical Care Management Association (Mar. 27, 2017); American Health Insurance Plans and Blue Cross Blue Shield Association (May 5, 2017).

[88] Source: Aetna (May 1, 2017).

[89] Source: Pharmaceutical Care Management Association (Mar. 27, 2017).

[90] U.S. Census Bureau, American FactFinder, ''B16007: Age by Language Spoken at Home for the Population 5 Years and Over,'' 2011–2015 American Community Survey (2017), *https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/S1601/0100000US.*

[91] CMS, ''Race, Ethnicity, and Language Preference in the Health Insurance Marketplaces 2017 Open Enrollment Period,'' (April 2017), *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Data-Highlight-Race-Ethnicity-and-Language-Preference-Marketplace.pdf.* California and New York were not included in the analysis as they do not use the HealthCare.gov platform.

[92] Between November 26, 2018 and April 2, 2019, OCR's Call Center received 983 calls on the complaint line from individuals who actually wanted to speak to their insurance company, not OCR, in order to raise billing questions, report a change of address, request a replacement insurance

Continued

phone number, available to file civil rights complaints, is listed at the bottom of the Notice of Nondiscrimination. *See* Appendix A to Part 92 (Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements and Sample Nondiscrimination Statement: Discrimination Is Against the Law). However, recipients of the notices often misunderstand it to be the phone number to call when they have questions to ask their health insurance issuer or health care provider. The majority of phone calls to the OCR complaint line do not concern civil rights matters at all. This experience indicates that many members of the public do not fully read the non-discrimination notice or are confused because it is attached to other information sent to them by their providers or issuers. The result has been a significant waste of OCR resources with respect to its complaint line and a commensurate waste of time for callers.

The Department's proposal to substantially replace the Section 1557 Regulation with the existing framework for protection of civil rights laws, while expressly addressing language access issues in this proposed rule, will better strike the balance between the government's interest in ensuring meaningful access to covered healthcare programs for LEP individuals and the burdens imposed on regulated entities in support of that interest.

III. Nondiscrimination in Health Programs or Activities

This proposed rule would substantially replace the Section 1557 Regulation. The provisions proposed for retention, revision, and repeal are as follows:

A. Provisions of the Proposed Section 1557 Rule at 45 CFR Part 92

The proposed rule would more faithfully fulfill the Department's congressional mandate. In Section 1557 of the PPACA, Congress applied long-standing nondiscrimination requirements to any health programs or activities that receive Federal financial assistance, or programs or activities administered by an Executive agency under Title I of the PPACA or any entity established under such Title I. It did so by cross-referencing the categories of protected classifications listed in those longstanding civil rights laws, namely, discrimination on the basis of race, color, national origin, sex, age, or disability. To ensure compliance, Congress dictated that ''[t]he enforcement mechanisms provided for and available under'' such laws ''shall apply for purposes of violations of'' Section 1557. The Department now proposes to fulfill this Congressional mandate by applying the enforcement mechanisms already provided for, and available under, existing statutes and their implementing regulations, including the rights and remedies under such laws.

Based on its review, and the preliminary injunction issued by the court in *Franciscan Alliance* that held parts of the Final Rule exceeded the Department's authority under the PPACA, the Department has determined that (in addition to exceeding its statutory authority) parts of the regulation are duplicative, unduly burdensome, and confusing to the regulated community. This proposed rule, accordingly, would substantially replace 45 CFR part 92 with provisions in keeping with the plain language of Section 1557, while continuing to codify certain provisions regarding covered entities' obligations with respect to language and disability access. This will ensure better compliance with the mandates of Congress, avoid further litigation, relieve regulatory burdens, reduce confusion, reduce uncertainty about the scope of Section 1557, promote substantive compliance, and improve the consistency of regulatory requirements between entities required to comply with the civil rights laws as a result of Section 1557 and those directly subject to only to the underlying civil rights laws.

The proposed rule would be divided into two subparts: Subpart A on General Provisions (consistent with the current regulation), and Subpart B on Specific Applications to Health Programs or Activities. The Department proposes to replace §§ 92.1 through 92.3, 92.5, 92.6, and 92.101 of the current rule with provisions addressing Section 1557's purpose, nondiscrimination requirements, scope of application, enforcement mechanisms, relationship to other laws, and meaningful access for LEP individuals.

The Department's proposal does not change the provision to submit assurances of compliance with Section 1557 at § 92.5, designated as § 92.4. In addition, the Department would retain, but redesignate (to adjust to the proposed restructuring in the rule) the provisions on voluntary acceptance of language assistance services (§ 92.201(g)), effective communication for individuals with disabilities (§ 92.202), accessibility of buildings and facilities (§ 92.203), accessibility of information and communication technology (§ 92.204), and the requirement to make reasonable modifications (§ 92.205).

Although the proposed rule would eliminate the definitions section in the Section 1557 Regulation, the Department proposes to retain many key definitions explicitly in other sections or through incorporation by reference to relevant statutes or regulations. For example, as discussed below, proposed § 92.3 (Scope of application) will define the scope of ''health program or activity.'' Proposed § 92.3 also effectively defines ''covered entities'' similar to the Final Rule by clarifying that the rule applies to: (1) Every health program or activity, any part of which is receiving Federal financial assistance (including credits, subsidies, or contracts of insurance) provided or made available by the Department; (2) any program or activity administered by the Department under Title I of the PPACA; or (3) any program or activity administered by any entity established under such Title. Furthermore, consistent with the text of Section 1557, proposed §§ 92.2 and 92.3 provide that ''Federal financial assistance'' includes credits, subsidies, or contracts of insurance.

The proposed rule uses the same characteristics as are included in the definitions of ''qualified interpreter'' for an LEP individual and of ''qualified translator'' in describing the requirements that an interpreter and translator, respectively, should meet (but omits the word ''qualified'' which is implied by the context). *See* proposed § 92.101(b)(3)(i) and (ii). The proposed rule also retains nearly verbatim, as requirements with respect to the provision of language access services, the characteristics used to define ''language assistance services.'' *See* proposed § 92.101(b)(2).

Additionally, the proposed rule retains most of the disability-rights related definitions from the current rule either explicitly, such as the definitions of ''disability'' and ''information and communication technology;'' by using the definition to describing the requirements or characteristics of the entity, such as when describing a ''qualified interpreter'' for an individual with a disability; or by referencing underlying regulations or statutes, such as for technical accessibility standards and definitions.

In other cases, some terms are clear enough to obviate the need for further definition given the context of the proposed rule including terms such as ''age,'' ''individual with limited English

card, seek a reimbursement check, or make a payment.

proficiency,'' ''qualified bilingual/multilingual staff,'' or ''individual with a disability.'' In these examples, OCR will continue to interpret the phrases naturally and consistent with the Final Rule.

The Department will also continue to abide by terms defined in the definitions sections of the implementing regulations for the underlying statutes. In fact, the Department believes it is generally more appropriate to rely on individual definitions applicable to individual statutes incorporated into Section 1557 as opposed to picking one standard (or creating a new one) and making it applicable in all cases, as under the Final Rule.

The Department asks for comment on whether other definitions should be included in the regulatory text.

REDESIGNATION TABLE

Old section	New section
92.201(g)	92.101(c)
92.202	92.102
92.203	92.103
92.204	92.104
92.205	92.105

The remaining provisions of Section 1557 would be repealed. A description of each proposed provision of the Section 1557 Regulation follows:

Proposed ''Subpart A—General Provisions''

Proposed ''45 CFR 92.1 Purpose.''

This proposed section describes the purpose of the proposed regulation as providing for the enforcement of Section 1557, which prohibits discrimination under any health program or activity receiving Federal financial assistance, or under any program or activity administered by an Executive agency under Title I of the PPACA or by any entity established under such Title, on the grounds of race, color, national origin, sex, age, or disability. The proposed section would provide that the Department's Office for Civil Rights (OCR) enforces these prohibitions using the mechanisms set forth in the Department's Title VI, Title IX, Age Act, and Section 504 regulations. The proposed section would replace the current § 92.1 in its entirety.

Proposed ''45 CFR 92.2 Nondiscrimination requirements.''

This proposed section describes the core substantive requirements of compliance with Section 1557 under the proposed regulation. Namely, the Department proposes to provide that, except as otherwise provided by Title I of the PPACA, an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance (including credits, subsidies, or contracts of insurance) provided by the Department, or under any program or activity administered by the Department under such Title, or under any program or activity administered by any entity established under such Title, on any grounds prohibited under the following statutes:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) (race, color, national origin);

(2) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) (sex);

(3) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) (age); or

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (disability).

The cross-reference to existing civil rights statutes does not change the prohibited grounds of discrimination, but applies them, to the extent they did not already apply, to the health care context. Thus, for example, the cross-referencing of Title IX (which prohibits sex discrimination in education programs or activities) in Section 1557 and in the proposed regulation means that sex discrimination, as defined by Title IX, is prohibited in health programs or activities to which this proposed part applies, not merely health programs or activities related to education. This proposed section would replace current § 92.2 in its entirety.

In keeping with the text of Section 1557, proposed § 92.2 would apply to health programs or activities receiving Federal financial assistance, ''including credits, subsidies, or contracts of insurance.''

Although Section 1557 prohibits discrimination by any program ''administered by an Executive Agency,'' the Final Rule itself acknowledged the difficulty of the Department enforcing the rule with respect to programs administered by other agencies.[93] Many other agencies have their own rules implementing the underlying statutes incorporated in section 1557. *See, e.g.,* 65 FR 52857 (Title IX common rule for 21 Federal agencies). HHS, therefore, proposes to continue the general limitation on the rule's scope found in the Final Rule, specifically, that the proposed rule not assert or encompass enforcement jurisdiction over entities receiving Federal financial assistance administered by another agency under Section 1557.

The current regulation, however, departed from this general principle by defining Federal financial assistance to include assistance that HHS ''does not have primary responsibility for administering,'' but merely ''plays a role'' in providing or administering. 81 FR 31384; 45 CFR 92.4. This gloss goes beyond the text of Section 1557, which, in relevant part, only covers certain programs or activities ''administered'' by the Department, not any program in which the Department ''plays a role in administering.'' In keeping with the text of Section 1557, the proposed regulation would not retain the ''plays a role'' language. As a result, the proposed rule would no longer cover issuers of Exchange plans solely on the basis that HHS plays a role in administering tax credits, also administered by the Internal Revenue Service.[94] Exchange plans, however, may still be subject to antidiscrimination enforcement by the Department under Section 1557 on other grounds, or under other antidiscrimination authorities. For example, qualified health plans (QHPs) sold on the Exchanges established under Title I of the PPACA are subject to Section 1557, and the issuers of QHPs are subject to regulation by the Department's Center for Consumer Information and Insurance Oversight, of the Centers for Medicare & Medicaid Services.

The Department seeks specific comment on the proposed elimination of the ''plays a role'' language.

The Final Rule applies to ''every health program or activity administered by the Department; and every health program or activity administered by a Title I entity.'' 45 CFR 92.2. But Section 1557, with respect to the administration of programs by the Department and PPACA's Title I entities, does not include the term ''health.'' Rather Section 1557 applies to ''any program or activity'' administered by the Department or any entity established under Title I of the PPACA.

[93] In the preamble to the Final Rule, the Department acknowledged its limited ability to regulate programs covered by other agencies. 81 FR 31379 (''Drafting a rule applicable to health programs and activities assisted by other Departments would pose numerous challenges'').

[94] In the preamble to the Final Rule, the Department acknowledged its limited ability to regulate programs covered by other agencies. 81 FR 31379 (''Drafting a rule applicable to health programs and activities assisted by other Departments would pose numerous challenges''). Additionally, the Department has not applied the Final Rule to the risk adjustments program (Section 1343 of the PPACA), and does not propose to do so in this proposed rule. *See also* 45 CFR 153.310 (risk adjustment administration).

The Department added the health limitation to the current rule because it did not believe Section 1557 was intended to apply to every program or activity administered by every Executive agency whether or not it had any relation to health. Accordingly, the preamble to the Final Rule stated it covered health programs administered by CMS, HRSA, CDC, Indian Health Service (IHS), and SAMHSA (for example, IHS tribal hospitals and clinics operated by the Department and the National Health Service Corps) but not any human services programs administered by the Department. 81 FR 31446. The Department continues to believe that Congress did not provide such expansive coverage, but believes that Section 1557 itself already provides a meaningful limitation without resort to inserting the word ''health'' when Congress did not do so, Section 1557 specifies that it applies to any program or activity administered by the Department (or other Executive Agency) ''under this title,'' meaning Title I of the PPACA. To be consistent with the text as passed by Congress, the proposed § 92.2 would apply to any program or activity administered by the Department under Title I of the PPACA and any program or activity administered by any entity established under such Title. Entities established under Title I of the PPACA include the health insurance exchanges established pursuant to the PPACA. Such exchanges currently include the 12 State Exchanges, 5 State Exchanges on the Federal platform, and 34 Federally-facilitated Exchanges. Title I additionally establishes, among other things, State advisory councils concerning community health insurance (section 1323).

The Department seeks public comment on the impact of this language, including on mechanisms for identifying affordable health insurance coverage options (Sec. 1103), the wellness program demonstration project (Sec. 1201, adding Public Health Service (PHS) Act Section 2705(l)), and the provision of community health insurance options (Sec. 1323).

Proposed ''45 CFR 92.3 Scope of application.''

This proposed section would clarify that the scope of application of the proposed rule would be consistent with the Civil Rights Restoration Act (CRRA), which defined the scope of the underlying civil rights laws based on whether or not an entity receiving Federal financial assistance is or is not principally engaged in the business of providing health care.

Proposed § 92.3 clarifies the scope of entities covered by the rule by specifying that the rule applies to: (1) Any health program or activity, any part of which is receiving Federal financial assistance (including credits, subsidies, or contracts of insurance) provided by the Department; (2) any program or activity administered by the Department under Title I of the PPACA; or (3) any program or activity administered by any entity established under such Title. Furthermore, as provided in Section 1557 of the PPACA [95] and in proposed § 92.2, the Department interprets ''Federal financial assistance'' in the proposed rule to apply to credits, subsidies, or contracts of insurance.

With respect to entities receiving Federal financial assistance, the current regulation defines the operation of a ''health program or activity'' to cover ''all [ ] operations'' of such entities when they are principally engaged in providing or administering ''health services or health insurance coverage or other health coverage.'' 45 CFR 92.4. The CRRA, however, defined ''program or activity'' under Title VI, the Rehabilitation Act, the Age Act, and Title IX to cover all the operations of entities only when they are ''principally engaged in the business of providing education, *health care,* housing, social services, or parks and recreation.'' Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (emphasis added).

''Health insurance'' is distinct from ''health care.'' *Compare* 5 U.S.C. 5371 (''''health care''' means direct patient-care services or services incident to direct patient-care services'') *with* 42 U.S.C. 300gg–91 (''The term 'health insurance coverage' means benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.'').[96] The Final Rule, however, went beyond the CRRA by covering all the operations of entities that are principally engaged in providing ''health insurance coverage or other health coverage,'' even if they are not principally engaged in the business of providing ''health care,'' despite there being nothing in Section 1557 indicating any abrogation—or extension—of the CRRA.[97]

Therefore, to provide further clarity on these issues and return to the CRRA's statutory text, proposed § 92.3 would explicitly incorporate the CRRA standard. The Department also believes this approach is an appropriate interpretation of the phrase ''health program or activity.'' If an entity is principally engaged in the business of health care, the Department proposes to interpret Section 1557 so that all operations of that entity would be deemed part of any ''program or activity'' it engages in, any part of which receives Federal financial assistance. If, on the other hand, an entity is not principally engaged in the business of health care, the Department proposes to interpret Section 1557 so that only the operation for which it receives Federal financial assistance is part of the ''program or activity.''

Specifically, the proposed section would set forth the general applicability standard from Section 1557: That it applies to any health program or activity, any part of which is receiving Federal financial assistance administered by the Department, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by the Department or any entity established under Title I of the PPACA.

Further, the Department proposes that § 92.3 provide that the regulation would cover all of the operations of any entity that receives Federal financial assistance from the Department and that is principally engaged in the business of providing health care, as part of a ''health program or activity.'' For any entity not principally engaged in the business of providing health care, ''health program or activity'' under the proposed regulation would apply to such entity's operations only to the extent any such operations receive Federal financial assistance.

Finally, the proposed section would clarify that, for purposes of the rule, an entity principally or otherwise engaged in the business of providing health insurance shall not, by virtue of such

[95] 42 U.S.C. 18116(a) (Section 1557 applies to recipients of Federal financial assistance for contracts of insurance).

[96] *See also* 45 CFR 160.103 (HIPAA administrative simplification) (''*Health care* means care, services, or supplies related to the health of an individual. *Health care* includes, but is not limited to, the following: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition, or functional status, of an individual or that affects the structure or function of the body; and (2) Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.'').

[97] The preamble to the Final Rule acknowledges the relevance of the CRRA, 81 FR at 31386, but does not explain how the provision of ''health care'' covers the provision of ''health insurance, even if only part of the health program or activity receives such assistance.''

provision, be considered to be principally engaged in the business of providing health care.

The proposed regulation would not apply to entities that do not receive Federal financial assistance from the Department. Likewise, as discussed above concerning the CRRA, the Department proposes that where entities receive Federal financial assistance but are not principally engaged in the business of providing health care, the regulation would not apply to the components or activities of those entities that do not receive Federal financial assistance. If an entity, such as a health insurance issuer, receives Federal financial assistance from the Department to further a health program or activity but is not principally engaged in the business of providing health care, the proposed regulation would apply to the entity's specific operations which receive Federal financial assistance from the Department, but it would not apply to the entity's entire operations.[98] Thus, for example, the proposed rule would generally not apply to short term limited duration insurance (STLDI) because, as the Department understands it, providers of STLDI are either (1) not principally engaged in the business of health care, or (2) not receiving Federal financial assistance with respect to STLDI plans specifically.[99]

Under the proposed section, examples of entities principally engaged in the business of providing health care would include hospitals, nursing facilities, hospices, community health centers, and physical therapists. Examples of recipients of Federal financial assistance from the Department for health programs or activities would include laboratories, medical schools, and nursing schools. Examples of recipients of Department assistance for contracts of insurance would include Medicare Part C (Medicare Advantage).

The proposed rule would not apply to Medicare Part B (except to the extent participation in a health care program is required for engaging in other operations),[100] or self-funded group health plans under the Employee Retirement Income Security Act of 1974 (ERISA), Federal Employees Health Benefits (FEHB) Program, or STLDI plans because (or to the extent) such programs do not receive Federal financial assistance from HHS and/or the entities operating them are not principally engaged in the business of providing health care as discussed above.

The Department seeks public comment on issues related to the scope of coverage under the proposed rule, including whether it should define ''health care'' in the rule according to the statutes cited above defining the term, whether it should define ''recipient'' according to the current rule or by incorporation by reference to definitions in the underlying statutes, and whether such a definition of recipient should include subrecipients.

Proposed ''45 CFR 92.4 Assurances.''

The Department contemplates retaining current § 92.5, requiring covered entities to submit an assurance of compliance with Section 1557 to the Department without change, but proposes to redesignate it as § 92.4. Paragraph (a) requires applicants for the Department's Federal financial assistance for health programs or activities, health insurance issuers seeking certification to participate in an Exchange, and States seeking approval to operate State Exchanges to submit assurances that the health program or activity will comply with Section 1557 and its regulation. Paragraph (b) clarifies that assurances of compliance with Section 1557 apply to the period during which Federal financial assistance is extended, or the applicable property is used, owned or possessed. Paragraph (c) requires that assurances with Section 1557 must be contained in covenants running with applicable property, interest, and land transfers from the Department. The source of these provisions is the Department's Section 504 regulations, and while Section 504 regulations have more detail, they do not have major substantive requirements that differ from their Title IX, Title VI, or Age Act regulations.[101]

The Department proposes to retain the assurance provisions and identify ''Section 1557'' on a consolidated assurance form with Title VI, Title IX, Section 504, and the Age Act to include major applicable civil rights laws and require all applicable covered entities to submit the assurance. The Department believes keeping Section 1557 on a consolidated form ensures that the insurance industry and States are aware that these Federal civil rights laws currently apply to them.

The Department seeks comment on whether it is appropriate to retain the requirement to submit an assurance of compliance with Section 1557 to the Department, or whether it unnecessarily duplicates requirements in the underlying regulations to provide such assurances of compliance to the Department.

Proposed ''45 CFR 92.5 Enforcement mechanisms.''

This proposed section would ensure that even under the proposed rule's repeal of certain provisions of the Section 1557 Regulation, the enforcement mechanisms provided for, and available under, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, and the Department's implementing regulations, shall apply for purposes of enforcement of Section 1557. Other than as proposed in the conforming amendments discussed in Part IV, the proposed rule would not repeal or otherwise amend the regulations implementing and enforcing Title VI at 45 CFR parts 80 and 81, Title IX at 45 CFR part 86, Section 504 at 45 CFR parts 84 and 85, and the Age Act at 45 CFR parts 90 and 91.

The proposed § 92.5 also designates the Director of the Department's Office for Civil Rights to receive complaints, conduct compliance reviews, and otherwise investigate and take enforcement actions with respect to allegations of discrimination in violation of Section 1557 under this part.[102]

[98] *Compare with Grove City College* v. *Bell,* 465 U.S. 555 (1984) (holding that receipt of Federal financial aid does not automatically trigger institution-wide coverage under Title IX) *abrogated in part by* the CRRA.

[99] The Public Health Service Act expressly excludes STLDI from its definition of ''individual health coverage,'' and the PPACA does not deem short term limited duration insurance to be qualifying coverage under the PPACA's minimum essential coverage requirements. 42 U.S.C. 300gg–91(b)(5); 26 U.S.C. 5000A; *see also* 83 FR 38212 (Aug. 3, 2018) (rule clarifying definition of short-term, limited-duration insurance to Departments of Treasury, Labor, and Health and Human Services regulations at 26 CFR 54.9801–2, 29 CFR 2590.701–2, and 45 CFR 144.103).

[100] The Department believes that the Federal financial assistance does not include Medicare Part B under the Social Security Act. *See* 2 CFR 200.40(c) (Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards); 45 CFR 75.502(h) (Uniform Administrative Requirement, Cost Principles, and Audit Requirements for HHS Awards).

[101] *Compare* 45 CFR 84.5 (Section 504) *with* 45 CFR 86.4 (Title IX), 80.4(a) (Title VI), 91.33 (Age Act).

[102] The Office of Personnel Management (OPM) handles of claims alleging discrimination in the Federal Employees Health Benefits (FEHB) Program. OPM is charged by Federal statute with offering FEHB plans as a fringe benefit of Federal employment and, in that role, approves benefit designs and premium rates, sets rules generally applicable to FEHB carriers, adjudicates and orders payment of disputed health claims, and adjusts policies as necessary to ensure compliance with nondiscrimination standards.

Proposed ''45 CFR 92.6 Relationship to other laws.''

The Department proposes § 92.6, to define the relationship of the regulation to other laws with more specificity than the current sections titled ''Application'' (§ 92.2) and ''Relationship to other laws'' (§ 92.3). The Department proposes to combine the substance of these two sections into a new § 92.6. It would set forth the text of Section 1557(b) nearly verbatim, and state that nothing in the proposed regulation shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, or Section 504 of the Rehabilitation Act of 1973, or to displace additional protections under State antidiscrimination laws.

The proposed section would also specify that the proposed regulation not be applied in a manner that conflicts with or supersedes exemptions, rights, or protections contained in several civil rights statutes, including those just mentioned, the Architectural Barriers Act of 1968,[103] the Americans with Disabilities Act of 1990 (as amended by the Americans with Disabilities Act Amendments Act of 2008),[104] Section 508 of the Rehabilitation Act of 1973,[105] and statutes protecting conscience and religious freedom.

Although the Section 1557 Regulation incorporated exemptions to Title VI, Section 504, and the Age Act,[106] it did not incorporate abortion,[107] religious,[108] and other [109] exemptions contained in Title IX. The Final Rule considered the question of explicitly incorporating the Title IX religious exemption in the Section 1557 Regulation, but declined, instead providing that, ''[i]nsofar as the application of any requirement under this part would violate applicable Federal statutory protections for religious freedom and conscience, such application shall not be required.''

The *Franciscan Alliance* court stated that the Department's failure to incorporate statutory exemptions ''nullifies Congress's specific direction to prohibit only the ground proscribed by Title IX.'' *Franciscan Alliance,* 227 F. Supp. 3d at 690–691 (citations omitted). The *Franciscan Alliance* court held that there was a likelihood that plaintiffs would prevail on the claim that ''[t]he Rule's failure to include Title IX's religious exemptions renders the Rule contrary to law.'' [110]

In its April 5, 2019, brief in *Franciscan Alliance,* DOJ, on behalf of HHS, stated that the prohibition on sex discrimination under Section 1557 ''unambiguously includes Title IX's exemptions, including those addressing religion and abortion.'' [111] This statement represents the Department's own further consideration of this issue, guided by DOJ's pronouncements on Title VII and Title IX. The Department believes that its enforcement of Title IX, and its enforcement of Section 1557 (to the extent it incorporates Title IX), must be constrained by the statutory contours of Title IX, which include explicit abortion and religious exemptions and which should be set forth more clearly than in the Final Rule.[112]

In the Department's view, Section 1557 did not override any statutes protecting conscience or civil rights, and the exemptions thereto, and it is appropriate to specify that the Section 1557 Regulation will not be implemented in violation of those laws. Indeed, Section 1303 of the PPACA states that nothing in the PPACA shall be construed to require qualified health plans to cover abortions as an essential health benefit (42 U.S.C. 18023(b)(1)(A)(i)) and ''[n]othing in this Act shall be construed to have any effect on Federal laws regarding—(i) conscience protection; (ii) willingness or refusal to provide abortion; and (iii) discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or provide or participate in training to provide abortion'' (42 U.S.C. 18023(c)(2)(A)). With respect to Section 1303 of the PPACA, this language is contained in a provision labeled ''NO EFFECT ON FEDERAL LAWS REGARDING ABORTION'' and is in a section that dealing with ''special rules'' about abortion. However, the language (''conscience protections'') is not limited to abortion.

In light of the PPACA's text and structure and the experience of the *Franciscan Alliance* litigation, the proposed section would incorporate by reference statutory exemptions and protections concerning religious and abortion exemptions with greater clarity than the Final Rule's § 92.2(b)(2) which currently states that, ''[i]nsofar as the application of any requirement under this part would violate applicable Federal statutory protections for religious freedom and conscience, such application shall not be required.''

This current provision would be amended and replaced by the proposed § 92.6 which provides that, ''[i]nsofar as the application of any requirement under this part would violate, depart from, or contradict definitions, exemptions, affirmative rights, or protections provided by any of the[se] statutes [ ] . . . or any related, successor, or similar Federal laws or regulations, such application shall not be imposed or required.''

Additionally proposed § 92.6 would explicitly identify and incorporate protections from specific religious freedom, conscience, and nondiscrimination statutes—42 U.S.C. 18113 (Section 1553 of the Patient Protection and Affordable Care Act); 42 U.S.C. 2000bb *et seq.* (the Religious Freedom Restoration Act, which applies to ''all Federal law . . . unless such law explicitly excludes such application''); 42 U.S.C. 238n (the Coats-Snowe Amendment); 42 U.S.C. 300a–7 (the Church Amendments); the Weldon Amendment (*e.g.,* Consolidated Appropriations Act of 2019, Pub. L. 115–245, Div. B, sec. 506(d) (Sept. 28, 2018)); and related conscience provisions in appropriations law (*e.g.,* Consolidated Appropriations Act of 2019, Pub. L. 115–245, Div. B. sec. 506) (Sept. 28, 2018)).

[103] 42 U.S.C. 4151 *et seq.*

[104] 42 U.S.C. 12181 *et seq.*

[105] 29 U.S.C. 794d.

[106] See 45 CFR 92.101(c) (The exceptions applicable to Title VI apply to discrimination on the basis of race, color, or national origin under this part. The exceptions applicable to Section 504 apply to discrimination on the basis of disability under this part. The exceptions applicable to the Age Act apply to discrimination on the basis of age under this part. These provisions are found at §§ 80.3(d), 84.4(c), 85.21(c), 91.12, 91.15, and 91.17–.18 of this Subchapter.'')

[107] ''Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities related to an abortion . . . .'' Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (codified at 20 U.S.C. 1688).

[108] 20 U.S.C. 1681(a)(3) (providing that the prohibition of discrimination on the basis of sex ''shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization''); *see also* 45 CFR 86.12 (Title IX exemption for educational organizations controlled by religious organizations).

81 FR 31435 (HHS declines to include a religious exemption in Section 1557).

[109] 20 U.S.C. 1681(a)(6)(B) (Title IX exemption for voluntary youth service organizations); 1686 (separate living facilities); 45 CFR 86.33 (exemption for separate toilet, locker room, and shower facilities).

[110] 227 F. Supp. 3d at 690–91.

[111] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O, p. 11 (N.D. Tex, filed April 5, 2019).

[112] As discussed further below, HHS also proposes to amend its underlying Title IX regulation to include the statutory abortion and religious exemptions explicitly.

Proposed ''Subpart B—Specific Applications''

Proposed ''45 CFR 92.101 Meaningful access for individuals with limited English proficiency''

The Department proposes to redesignate § 92.201, on providing meaningful access for individuals with limited English proficiency (LEP), as § 92.101 and, as so redesignated, to amend the provision to more closely align with the Department's 2003 LEP guidance.

In proposed paragraph (a), the Department sets forth the governing standard for the provision of meaningful access to programs and activities receiving Federal financial assistance based on the U.S. Supreme Court decision of *Lau* v. *Nichols,* 414 U.S. 563 (1974), which interprets Title VI's prohibition of discrimination on the basis of ''national origin'' in the context of LEP individuals. Subsection (a) also incorporates language from the Department of Justice's and HHS's LEP guidance documents. *See* 67 FR 41455 (June 18, 2002) (DOJ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons); 68 FR 47311 (Aug. 8, 2003) (HHS Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons).

Proposed paragraph (a) would adopt the standard from DOJ's and HHS's LEP guidance by specifying that any entity operating or administering a health program or activity subject to this rule shall take reasonable steps to ensure meaningful access to such programs or activities by limited English proficient individuals. Because Section 1557 applies to a broader scope of entities than only recipients of federal financial assistance, the Department proposes to use ''entity'' rather than ''recipient'' which retains the nomenclature used in the current rule with respect to LEP access.

Adopting this language would apply the same standard to both health and human services within the Department, and conform to the other Federal agencies who follow DOJ's LEP guidance, consistent with its civil rights coordinating authority. This standard is also consistent with Department's LEP guidance.[113] This provision is proposed to replace the current rule's provision which requires that reasonable steps to provide meaningful access be provided to each LEP individual eligible to be served or likely to be encountered.[114]

Proposed paragraph (b) would likewise adopt the four factors from the Department's existing LEP guidance to assist entities in determining the extent of a covered entity's obligation to provide language assistance services. The Department proposes to clarify that the starting point for OCR's exercise of its enforcement discretion would be an individualized case-by-case assessment that balances the following four factors: (1) The number or proportion of LEP individuals eligible to be served or likely to be encountered in the eligible service population; (2) the frequency with which LEP individuals come in contact with the entity's health program, activity, or service; (3) the nature and importance of the entity's health program, activity, or service; and (4) the resources available to the entity and costs. 68 FR at 47314–15 (HHS guidance); *accord* 67 FR at 41459–60 (factors from DOJ's 2002 LEP guidance).[115] By using the factors as written in the Department's LEP Guidance, the proposed rule would use the same factors in health care that already apply to all of the Department's programs, including human services.

Although the current Section 1557 Regulation states that it applies to individuals ''eligible to be served or likely to be encountered,''[116] it did not explicitly address factors such as the number or proportion of LEP individuals, the frequency of contact, the resources available, or the costs identified in the Department's LEP guidance.[117] Additionally the Final Rule newly required the OCR Director to take into account whether a covered entity had developed and implemented an effective written language access plan in evaluating compliance.[118] By contrast, the HHS LEP Guidance had stated that ''[r]ecipients with very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan.'' 68 FR 47320. The Department also stated in its guidance that recipients have ''alternative and reasonable ways to articulate'' how they are providing meaningful access to LEP individuals besides through written language access plans. *Id.*

Because of these departures from the Department's LEP guidance, the Department anticipated that 50% of covered entities would develop language access plans subsequent to the finalization of the Section 1557 Regulation, amounting to a total annualized cost of $84.1 million over five years (undiscounted). 81 FR 31459.

The Department seeks comment on this proposed provision with respect to how health care providers would articulate their responsibilities under the proposed rule and comment on any related costs or cost savings.

Next, the Department retains § 92.201(c) through (e) and (g) from the current rule, but proposes to redesignate these provisions as § 92.101(b)(2) through (4) and (c), with the proposed clarifying revision that these obligations, which are applicable to specific language services, would apply only to the extent necessary to comply with the standard articulated in (a) (which is consistent with the HHS LEP guidance), as informed by the entity's individualized assessment of the four factors. In general, language assistance services, if required to be offered by an entity, must be no-cost, timely, and accurate. If the standard requires an entity to offer translators or interpreters, they must also meet specific minimum qualifications, including ethical principles, confidentiality, proficiency, effective interpretation, and ability to use specialized terminology as necessary in the health care setting. The proposed paragraph also provides a list of other types of ''language assistance services'' to mirror the definition of the phrase under the current rule, with the exception of taglines, which the Department no longer believes constitute the actual provision of a

[113] 68 FR 47312 (Aug. 8, 2003) (HHS LEP guidance) (stating that ''Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons.'' *See also* 67 FR 41455 (June 18, 2002) (DOJ LEP Guidance); Executive Order 13166 on Improving Access to Services for Persons with Limited English Proficiency, 65 FR 50121 (Aug. 16, 2000) (directing all Federal agencies to develop LEP guidance consistent with DOJ's LEP guidance).

[114] 45 CFR 92.201(a). *But see* 68 FR 47312, 47314 (Aug. 8, 2003) (HHS LEP guidance) (stating that recipients may conclude that ''in certain circumstances'' recipient-provided language services are not necessary).

[115] The Department notes that, in both its LEP guidance and in the Department of Justice's LEP guidance, language in factor (1) also refers to LEP persons rather than individuals, refers to the number of those persons served or encountered rather than those eligible to be served or likely to be encountered, and refers to those served or encountered by the program or grantee rather than in the eligible service population. . Likewise, language in factor (3) refers to the nature and importance of the program, activity, or service provided by the program to people's lives. The Department believes that these variations in descriptions of the factors have the same meaning, but asks for comment on which formulation of these factors it should use for purposes of this rulemaking.

[116] 45 CFR 92.201(a).

[117] *But see* 45 CFR 92.201(b) (including a catchall allowing the Director to ''take into account other relevant factors'').

[118] *See* 45 CFR 92.201(a).

service, as opposed to the notification of the availability of services.

Like the current rule, when interpretation services are required by the rule, the proposed rule would prohibit an entity from requiring a LEP individual to bring his or her own interpreter or rely on a minor child or accompanying adult to facilitate communication, except under limited exceptions.

Finally, the Department proposes to redesignate § 92.201(f), which identified specific technical and training requirements for use of video remote interpreting services for LEP individuals, as § 92.101(b)(3)(iii), and, as so designated, to revise the provision. In § 92.201(f), the Department extended the application of the Americans with Disabilities Act regulatory definition of ''video remote interpreting services'' which requires video that is high quality, real-time, full-motion large, sharply delineated, and that does not transmit blurry or grainy images. *See* 45 CFR 35.160. Although individuals with hearing impairments rely on accurately seeing sign language interpreters (and the proposed rule retains these access standards for persons who are deaf or hard of hearing), foreign language speakers can, in many circumstances, rely solely on a clear audio transmission for effective communication. Given that equipment and training costs for more sophisticated video remote interpreting technology can be more expensive than audio,[119] the Department believes that additional video standards may not justify the costs, particularly with respect to small providers.[120]

The Department seeks comment on the extent to which covered entities rely on video remote interpreting for LEP individuals, circumstances where a clear video signal (as opposed to audio) would be necessary for effective communication, the applicable costs of this service, and whether such standards improve the effectiveness of communication. Consequently the Department proposes to repeal certain provisions on video standards for remote language interpretation services, but retain the audio standards which require clear, audible transmission of voices, use of quality video connection without lagging or irregular pauses in transmission, and applicable training of staff to use the remote interpreting technology.

Finally, paragraph (c), by retaining the provision currently found at § 42.201(g), would clarify that Section 1557 does not require patients to accept the language access services offered by a provider.

In its proposed revisions to its meaningful access requirements, the Department attempts, in accordance with Supreme Court guidance, to strike an appropriate balance with respect to the Title VI rights of LEP individuals and the burdens imposed on the regulated community. The Department believes that its proposal—in what it proposes to retain, and in what it proposes to revise—strikes the right balance and provides benefits greater than the burdens imposed. The Department nevertheless seeks comment on whether it has struck that proper balance with respect to benefits and burdens.

The Department seeks comment particularly in light of the proposed retention of some provisions that impose requirements on covered entities under the Section 1557 Regulation (which govern health programs or activities) but not on entities who only receive HHS funding for human services. Specifically, on whether there is or will continue to be problems, confusion or further complexity in implementing the regulations arising from differing standards, and if so, what could or should be done to address such problems/issues, including the possibility of amending the Department's Title VI regulation.

The Department retains several key definitions with respect to LEP services. The proposed rule incorporates, as requirements with respect to interpreters and translators, the elements of the definitions of ''qualified interpreter'' for an individual with LEP and of ''qualified translator'' in the text of the rule. *See* proposed § 92.101(b)(3). In other cases, some terms are clear enough so as to not require a definition, such as ''individual with limited English proficiency.'' In this example, OCR will continue to interpret the phrase as under the Final Rule to mean ''an individual whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.'' Similarly, OCR will continue to interpret the phrase ''qualified bilingual/multilingual staff'' to mean a member of a covered entity's workforce who is designated by the covered entity to provide oral language assistance as part of the individual's current, assigned job responsibilities and who has demonstrated to the covered entity that he or she: (1) Is proficient in speaking and understanding at least spoken English and the spoken language in need of interpretation, including any necessary specialized vocabulary, terminology and phraseology, and (2) is able to effectively, accurately, and impartially communicate directly with LEP individuals in their primary languages.

The Department contemplates also continuing to abide by terms defined in the definition section of the Title VI regulation where relevant to LEP issues.

Proposed ''45 CFR 92.102 Effective communication for individuals with disabilities.''

The Department retains § 92.202 of the current rule, but proposes to redesignate it as § 92.102. Paragraph (a) requires that communications with individuals with disabilities must include provision of appropriate auxiliary aids and services, bars requiring that individuals with disabilities bring their own interpreters, sets minimum standards for video remote interpreting and telephone relay services, exempts covered entities from actions that result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, and requires appropriate timeliness, respect for privacy concerns, and independence of the individual with a disability. Paragraph (b) requires recipients of Federal financial assistance and State Exchanges subject to part 92 to provide appropriate auxiliary aids. These provisions are drawn from regulations implementing Title II of the Americans with Disabilities Act, which applies to any public entity,[121] and which were promulgated by the Department of Justice. *See* 28 CFR 35.160 through 35.164.

As stated earlier, although the Department proposes to repeal the definitions section, it would still apply

[119] *See* Barb Jacobs, Anne M. Ryan, *et al., Medical Interpreters in Outpatient Practice,* 16:1 Annals of Family Medicine 70–76 (Jan. 2018), *https://doi.org/10.1370/afm.2154* (stating that costs can be ''considerable,'' ranging from $1.25 to $3.00 per minute for audio interpreters, and $1.95 to 3.49 per minute for video interpreters, sometimes with minimum number of minutes required per session. Setup costs for video remote interpreting equipment vary, depending on whether a laptop, desktop, or cameras, speakers and microphones are used'').

[120] Christopher M. Burkle, Kathleen A. Anderson, *et al., Assessment of the efficiency of language interpreter services in a busy surgical and procedural practice,* BMC Health Services Research 17:456 (2017), *https://doi.10.1186/s12913-017-2425-7* (''With increasing numbers of LEP patients over time along with any new mandates for providing language assistance, the financial implications for many health care facilities will likely continue to be a challenge'').

[121] ''Public entity'' includes State or local government; any department, agency, special purpose district, or other instrumentality of a State or States or local government. 42 U.S.C. 12311; *see also* 28 CFR 35.104(3). The proposed rule instead uses ''entity'' with respect to provisions concerning disability rights, as it does with other provisions concerning who or what is covered by the proposed rule.

many of the definitions that the Section 1557 Regulation incorporated from the Americans with Disabilities Act (''ADA'') (42 U.S.C. 12101 *et seq.*) or its regulations. The definitions incorporated from the ADA are the following: disability,[122] auxiliary aids and services,[123] qualified interpreter,[124] video remote interpreting,[125] information and communications technology,[126] technical definitions and standards under the ADA,[127] and Uniform Federal Accessibility Standards as promulgated.[128] The Department also proposes to retain the Current Rule's definitions of ''oral transliterators'' [129] and ''cued language transliterators.'' [130]

The Department seeks comment on whether to propose an exemption from the auxiliary aids and services requirement for covered entities with fewer than 15 employees. The Department's current Section 504 regulations permit the exemption, but allow the OCR Director discretion to impose a requirement on recipients with fewer than 15 employees if provision of auxiliary aids and services would not significantly impair the ability of the recipient to provide the benefits or services. *See* 45 CFR 84.52(d). The OCR Director announced such a requirement in 2000. *See* Notice of Exercise of Authority Under 45 CFR 84.52(d)(2) Regarding Recipients With Fewer Than Fifteen Employees, 65 FR 79368 (Dec. 19, 2000). The Final Rule did not include the exemption because the Department believed that imposing the requirement on all entities would promote ''uniformity and consistent administration of law.'' 81 FR 31407.

Proposed ''45 CFR 92.103 Accessibility standards for buildings and facilities.''

The Department proposes to retain § 92.203 of the current rule, but to redesignate it as § 92.103. Subsection (a) requires that new construction or alteration of buildings or facilities subject to Section 1557 must comply with the 2010 ADA Standards for Accessible Design by January 18, 2018. However, this paragraph allows departures from the 2010 ADA standards where other methods are permitted that provide substantially equivalent or greater access to and usability of the building. Subsection (b) contains a safe harbor for new construction or alteration of buildings or facilities subject to Section 1557, allowing existing facilities which were only required to be compliant with the UFAS standards, 1991 ADA Standards, or the 2010 ADA Standards as of July 18, 2016, to be deemed compliant, unless there is new construction or alteration after January 18, 2018. The source of these provisions, Title III of the Americans with Disabilities Act, applies to any public or private owner, lessor, or operator of a place of public accommodation,[131] any public or private owner, lessor, or operator of commercial facilities,[132] or private entities that offer examinations or courses related to applications, licensing, certification, or credentialing for secondary or postsecondary education, professional, or trade purposes.[133]

The Department seeks comment on the appropriateness of applying the 2010 ADA Standards' definition of ''public building or facility'' to all entities covered under Section 1557, specifically with respect to benefits to individuals and disabilities or burdens on private entities related to multistory building elevator [134] and TTY [135] requirements.

Proposed ''45 CFR 92.104 Accessibility of information and communication technology for individuals with disabilities.''

The Department retains § 92.204 of the current rule, but proposes to redesignate it as § 92.104. Paragraph (a) requires covered entities to ensure that their health programs or activities provided through information and communication technology are accessible to individuals with disabilities, except when resulting in an undue financial or administrative burden or fundamental alteration in the nature of an entity's health program or activity. Paragraph (b) requires effective communication over Federally-facilitated Exchange websites and Department administered health programs or activities it administers.

The Department proposes to use the term ''information and communication technology'' as defined in the Architectural and Transportation Barriers Compliance Board (''U.S. Access Board'') regulations implementing Section 508 of the Rehabilitation Act (36 CFR part 1194, appendix A, E103.4). In the Final Rule, HHS stated that it would use the terminology and its definition from the U.S. Access Board regulations. 81 FR 31382. At the time of the Final Rule's promulgation, the Architectural and Transportation Barriers Compliance Board regulations had been proposed but the rulemaking process had not concluded. The proposed Section 1557 rule includes the updated citation and nomenclature change from the now finalized U.S. Access Board regulation. 82 FR 5790 (Jan. 18, 2017) (Final Rule); 83 FR 2912 (Jan. 22, 2018) (technical edits).

Paragraph (b) states the requirements of Section 504 as applied to the Department and Department-conducted or administered health programs or activities. *See* 29 U.S.C. 794 (Section 504); 45 CFR part 85 (Section 504). However, in addition to Section 504, Section 508 of the Rehabilitation Act and its implementing regulations also apply to each Federal department or agency. *See* 29 U.S.C. 794d; *see also* 45 CFR part 85 (Section 504), 36 CFR 1194.1 and Apps. A, C, and D.[136] The

[122] 42 U.S.C. 12102 (The term ''disability'' means with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment.'' 42 U.S.C. 12102(1)).

[123] The list of auxiliary aids and services from 28 CFR 35.104 is incorporated into the proposed rule at § 92.102(b)(1).

[124] The description of a qualified interpreter from 28 CFR 35.104 informs the description in the proposed rule at § 92.101(b)(3).

[125] The description of video remote interpreting at 28 CFR 36.303(f) is incorporated by reference in the proposed rule at § 92.102(b)(1)(i).

[126] 36 CFR part 1194, appendix D, D1194.4.

[127] Appendix D to 28 CFR part 36 and 28 CFR 35.104.

[128] 49 FR 31528 (Aug. 7, 1984), *https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards/ufas.*

[129] The Section 1557 Rule defined ''oral transliterators'' as ''individuals who represent or spell in the characters of another alphabet''). 45 CFR 92.4.

[130] ''Cued language interpreters'' are defined as ''individuals who represent or spell by using a small number of handshapes''). 45 CFR 92.4.

[131] 42 U.S.C. 12812(a). *See also* 28 CFR 35.102 (DOJ regulations apply to ''all services, programs, and activities provided or made available by public entities'').

[132] 42 U.S.C. 12183.

[133] 28 CFR 36.102(a)(3).

[134] Exception 1 of section 206.2.3 of the 2010 Standards exempts multistory buildings besides the professional office of a health care provider owned by private entities from the requirement to provide an elevator to facilitate an accessible route throughout the building. This exemption does not apply to public entities.

[135] The 2010 ADA Standards also specifies TTY requirements for public buildings different from private buildings. *Compare* ADA 2010 Standard 217.4.3.1 (public buildings) *with* ADA 2010 Standard 217.4.3.2 (private buildings).

[136] When conformance to requirements in the Revised 508 Standards would impose an undue burden or would result in a fundamental alteration in the nature of the ICT, conformance is required only to the extent that it does not impose an undue burden or result in a fundamental alteration in the nature of the ICT. The Section 1557 Regulation does not override the standards under Section 508 that concurrently apply to the Department and Department-conducted health programs or activities.

Department seeks comment as to whether the Department should cross-reference Section 508 and its applicable implementing regulations in proposed § 92.104.

Proposed ''45 CFR 92.105 Requirement to make reasonable modifications.''

The Department retains § 92.205 of the current rule, but proposes to redesignate it as § 92.105. This section requires covered entities to make reasonable modifications to policies, practices, or procedures when necessary, to avoid discrimination on the basis of disability, except if the modification would fundamentally alter the nature of the health program or activity. This provision is derived from regulations implementing Title II of the Americans with Disabilities Act promulgated by the Department of Justice and imposed on all public entities. *See* 28 CFR 35.104.

The Department seeks comment whether this provision should be retained or substituted with language conforming to the Department of Justice's Section 504 coordinating regulations which state that covered entities ''shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified'' individual with a disability. *See* 28 CFR 92.205. The Department also seeks comment whether to include an exemption for ''undue hardship.'' *See* 45 CFR 84.12 (HHS Section 504 regulation); 28 CFR 92.205 (DOJ Section 504 coordinating regulation).

Request for Comments on Proposed 45 CFR 92.102 Through 92.105

In retaining the requirements imposed in the Section 1557 Regulation through Section 504 with respect to disability, the Department seeks to strike an appropriate balance with respect to the Section 504 rights of individuals with disabilities and the obligations imposed on the regulated community. With respect to the requirement for regulated entities to provide assurances, the Department also seeks to strike an appropriate balance. The Department believes that, in retaining all of these requirements, it has struck that balance and provides benefits greater than the burdens it imposes. Even so, the Department seeks comment on whether it has struck that proper balance by retaining the provisions, and whether the benefits of these provisions exceed the burdens imposed by them. The Department also seeks comment on whether, in light of the proposed retention of such provisions, the requirements imposed on covered entities under the 1557 regulations differ from those entities who are only subject to the underlying civil rights laws and regulations (*e.g.,* the Department's human services grantees), and whether there is or will continue to be problems, confusion or further complexity in implementing the regulations arising from any lack of consistency of the requirements imposed under the regulations and, if so, what could or should be done to address such problems or issues.

The Department seeks comment on whether revisions should be made to these provisions and whether they are adequately addressed in the underlying regulations (or should be) or if additional cross references should be made.

B. Current Section 1557 Regulation Provisions Proposed for Repeal or Reconsideration

The proposed rule would repeal certain provisions of the Section 1557 Regulation that conflict with, or unnecessarily duplicate, the statutory text of Section 1557, Federal case law, the four statutes incorporated by Section 1557 (Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), or their implementing regulations. The proposal to repeal such provisions from the Section 1557 Regulation would leave in place all of the substantive protections of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973 and the enforcement mechanisms of those statutes referenced at proposed § 92.2. As discussed above, the Department does not propose to remove several provisions prohibiting discrimination against individuals with disabilities: With respect to effective communication, accessibility of buildings and facilities, accessibility of information and communication technology, and the requirement to make reasonable modifications. The Department also does not propose to repeal the provision on assurances of compliance with Section 1557. A provision on language access services for LEP individuals is retained (with proposed revisions), with the exception of the provisions on taglines, notices of nondiscrimination, the use of language access plans, and video standards, as described in the following section, as well as many duplicative provisions.

1. Taglines, Notices, Language Access Plans, and Video Interpretation Standards

The Department proposes to repeal *in toto* the Section 1557 provisions on taglines,[137] the use of language access plans,[138] and notices of non-discrimination.[139] The Department also proposes to replace the requirements for remote English-language video interpreting services with comparably effective requirements with respect to audio-based services.[140] The current rule's provisions were not justified by need, were overly burdensome compared to the benefit provided, and created inconsistent requirements for HHS funded health programs or activities as compared to HHS funded human services programs or activities. The Department proposes to return to the language access standard previously in place under the existing Title VI regulation as interpreted by the U.S. Supreme Court and HHS and the Department of Justice in their LEP guidance documents. Other Department regulations that require the provision of taglines in certain healthcare contexts [141] and do not otherwise track,

[137] *See* 45 CFR 92.4 (definition of taglines), 92.8(d) (posting of taglines), 92.8(e) (languages of taglines), 92.8(f) (tagline notices). 92.8(g) (taglines in significant publications and communications); Appendix B to 45 CFR part 92 (sample tagline).

[138] 45 CFR 92.201(b)(2) (requiring the OCR Director to ''take into account . . . whether a covered entity has developed and implemented an effective written language access plan, that is appropriate to its particular circumstances'' in evaluation of compliance). 45 CFR 92.201(b)(2).

[139] 45 CFR 92.8; Appendix B to 45 CFR part 92 (sample notice).

[140] 45 CFR 92.201(f).

[141] *E.g.,* 42 U.S.C. 300gg–15(b)(2) and 300gg–19(a)(1)(B) (requiring standards for ensuring that the Summaries of Benefits and Coverage and certain notices are provided in a culturally and linguistically appropriate manner); 42 U.S.C. 1396d(p)(5)(A) (requiring HHS to distribute to States an application form for Medicare cost-sharing in English and 10 non-English languages); 26 CFR 1.501(r)–4(a)(1), (b)(5)(ii) (requiring a hospital organization to translate certain documents, among other requirements, to qualify for a tax-exempt status with respect to a hospital facility); 42 CFR 422.2262(a)(1)–(2) and 422.2264(e) (setting forth Medicare Advantage marketing requirements, which include requiring Medicare Advantage organizations to translate marketing materials into non-English languages spoken by 5% or more of individuals in a plan service area), 423.2262(a)(1)–(2) and 423.2264(e) (setting forth Medicare Part D marketing requirements, which include requiring Part D plan sponsors to translate marketing materials into non-English languages spoken by 5% or more of individuals in a plan service area); 45 CFR 155.205(c)(2)(iii)(A) (Marketplaces must post taglines on their websites and include taglines in documents ''critical for obtaining health insurance coverage or access to health care services through a QHP''); 45 CFR 147.136(e)(2)(iii) and (e)(3), and 147.200(a)(5) (requiring taglines in languages in which 10% of individuals with limited English proficiency (LEP) county-wide are exclusively literate on internal claims and appeals notices and

reference, or rely on Section 1557 or its regulations would not be impacted by the proposed repeal of the taglines provisions.[142]

When it promulgated the Section 1557 Regulation, the Department did not discuss all available Department data on the extent of voluntary compliance with HHS's LEP 2003 guidance. In 2010, the Department's Office of the Inspector General (OIG) published two reports,[143] which found that the vast majority of Medicare providers and plans in counties with high proportions of LEP persons surveyed in 2009 conducted the assessment recommended in HHS's guidance.[144] Additionally, in that 2010 report, 27% of providers cited the cost of offering language services as an obstacle.[145] The generally high rate of voluntary action is one reason that the Department proposes to repeal some of the Final Rule's LEP mandates and replace them with the principles and factors of HHS's LEP guidance. The Department requests comment on these OIG reports, and requests other surveys or reports, if available, with more current or comprehensive data, to evaluate the level of voluntary compliance with the best practices identified in the Department's LEP guidance.

2. Redundant Provisions Duplicative of Pre-Existing Regulations

The Section 1557 Regulation contains provisions that are duplicative of, inconsistent with, or may be confusing in relation to the Department's pre-existing Title VI, Section 504, Title IX, and the Age Act regulations. In some cases, they may also be duplicative of, inconsistent with, or confusing in relation to coordinating regulations published by DOJ for Title VI and Section 504, applicable to recipients of Federal financial assistance. *See* 28 CFR parts 41 (Section 504) and 42 (Title VI).

These Section 1557 provisions relate to definitions;[146] health insurance coverage;[147] certain employee health benefits programs;[148] notification of rights of beneficiaries under civil rights laws;[149] designation of responsible employees and adoption of grievance procedures;[150] access granted to OCR for review of covered entities' records of compliance;[151] prohibitions on intimidation and retaliation;[152] and remedial action and voluntary action.[153]

The Department seeks comment on the provisions proposed for repeal, and which of these, if any, should be preserved, in whole or part, in the rule, whether they are already addressed in the underlying regulations (or should be), and with particular comments requested about the following subjects:

- Coverage of certain employee health benefit programs.
- Designation of responsible employees and adoption of grievance procedures.
- Notification of beneficiaries, enrollees, applicants, patients, and/or members of the public of rights and responsibilities under civil rights laws.

IV. Need for Conforming Amendments

In conjunction with the proposed new provisions for the Section 1557 regulation, the Department proposes to add provisions containing Title IX's exemptions to its Title IX Regulation in order to conform it to the statute, be consistent with the Section 1557 regulation, and reflect current law. This proposed rule would also amend regulations governing certain HHS-funded or HHS-administered health programs covered by Section 1557 or Title IX in order to conform them to the scope of the changes defined by this proposed rule.

A. Nondiscrimination in Education Programs or Activities

In conjunction with the proposed Section 1557 Regulation, the Department proposes to conform the Title IX regulation to statutory exemptions consistent with the Section 1557 regulation and current law. Although the Section 1557 Regulation incorporated exemptions of Title VI, Section 504, and the Age Act,[154] it did not incorporate the abortion and religious exemptions contained in Title IX. The *Franciscan Alliance* court stated that the Department's failure to incorporate statutory exemptions ''nullifies Congress's specific direction to prohibit only the ground proscribed by Title IX.'' *Franciscan Alliance,* 227 F. Supp. 3d at 690–691 (citations omitted).

In its April 5, 2019 brief in *Franciscan Alliance,* DOJ, on behalf of HHS, stated that the prohibition on sex discrimination under Section 1557 ''unambiguously includes Title IX's exemptions, including those addressing religion and abortion.'' [155] To address the *Franciscan Alliance* court's holding and ensure a consistent and equitable enforcement approach, HHS proposes to amend its Title IX regulation to include

on an issuer's Summary of Benefits and Coverage); 42 CFR 435.905(b)(3) (requiring individuals to be ''informed of the availability of language services . . . and how to access . . . [them] through providing taglines in non–English languages indicating the availability of language services''); 42 CFR 457.340(a) (applying certain Medicaid requirements, including 435.905(b)(3), which requires individuals to be ''informed of the availability of language services . . . and how to access . . . [them] through providing taglines in non–English languages indicating the availability of language services''); 210 Illinois Cons. Stat. 87/1 (Illinois Language Assistance Act).

[142] *See, e.g.,* 45 CFR 155.205(c)(2)(iii)(A) (deeming compliance with the LEP provisions of the Section 1557 regulation to constitute compliance with CMS's LEP requirements).

[143] HHS OIG, Guidance and Standards on Language Access Services: Medicare Providers (July 2010) (OIG Providers Report), *https://oig.hhs.gov/oei/reports/oei-05-10-00051.pdf* (surveying 140 randomly selected Medicare providers, such as hospitals and nursing homes, that directly supply health care services to beneficiaries); HHS OIG, Guidance and Standards on Language Access Services: Medicare Plans (July 2010) (OIG Plans Report), *https://oig.hhs.gov/oei/reports/oei-05-10-00050.pdf* (surveying 139 randomly selected private companies that contract with CMS to provide health insurance under Medicare Advantage or prescription drug coverage under Medicare Part D).

[144] OIG Providers Report at 34; OIG Plans Report at 29.

[145] OIG Providers Report at 23.

[146] *Compare* 45 CFR 92.4 (Section 1557) *with* 45 CFR 80.13 (Title VI), 85.3 (Section 504), 86.2 (Title IX) and 91.12 (Age Act).

[147] *Compare* 45 CFR 92.207 (non-discrimination in health-related insurance and other health-related coverage under Section 1557) *with* 45 CFR 80.5 (health benefits under Title VI), 84.43 (health insurance under Section 504), 84.52 (health benefits under Section 504), 84.33 (rule of construction of Section 504 vis-à-vis validly obligated payments from health insurer); 86.39 (health insurance benefits and services under Title IX).

[148] *Compare* 45 CFR 92.208 (employer liability for discrimination in employee health benefit programs in Section 1557) *with* 45 CFR 86.56 (discrimination on the basis of sex in fringe benefits under Title IX). In view of the current 1557 rulemaking, the enforcement Memorandum of Understanding (MOU) between OPM and the Department, available at *https://www.hhs.gov/sites/default/files/opm.pdf,* would be moot if this proposed rule were to become final. Moreover, because the MOU is akin to subregulatory guidance, it is suspended during this rulemaking, consistent with Section V below.

[149] *Compare* 45 CFR 92.8 and Appendix A to 45 CFR part 92 (Section 1557) *with* 45 CFR 80.6 and Appendix to Part 80 (Title VI), 84.8 (Section 504), 86.9 (Title IX) and 91.32 (Age Act).

[150] *Compare* 45 CFR 92.7 and Appendix C to 45 CFR part 92 (Section 1557) *with* 45 CFR 84.7 (Section 504), and 86.8 (Title IX).

[151] *Compare* 45 CFR 92.303(c) (Section 1557) *with* 45 CFR 91.31 (Age Act) and 80.6(c) (Title VI).

[152] *Compare* 45 CFR 92.303(d) (Section 1557) *with* 45 CFR 80.7(e) (Title VI) and 91.45 (Age Act).

[153] *Compare* 45 CFR 92.6 (Section 1557) *with* 45 CFR 84.6 (Section 504), 86.3 (Title IX), and 91.48 (Age Act).

[154] See 45 CFR 92.101(a)(6) (The exceptions applicable to Title VI apply to discrimination on the basis of race, color, or national origin under this part. The exceptions applicable to Section 504 apply to discrimination on the basis of disability under this part. The exceptions applicable to the Age Act apply to discrimination on the basis of age under this part. These provisions are found at §§ 80.3(d), 84.4(c), 85.21(c), 91.12, 91.15, and 91.17–.18 of this Subchapter.'')

[155] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O, p. 11 (N.D. Tex, filed April 5, 2019).

the statutory abortion [156] and religious [157] exemptions.

The Final Rule did not include an affirmative religious exemption in the Section 1557 Regulation, but stated that ''Insofar as the application of any requirement under this part would violate applicable Federal statutory protections for religious freedom and conscience, such application shall not be required.'' The *Franciscan Alliance* court held that there was a likelihood that plaintiffs would prevail on the claim that ''[t]he Rule's failure to include Title IX's religious exemptions renders the Rule contrary to law.'' [158] After further consideration of this issue, the Department concludes that any enforcement of Title IX by the Department, and, therefore, any enforcement of Section 1557 to the extent it incorporates Title IX, must be constrained by the statutory contours of Title IX, which include its abortion and religious exemptions, and must be set forth more clearly than occurred in the Final Rule. Therefore, to comply with the *Franciscan Alliance* court's decision and Congress's directives in Title IX and Section 1557, and to properly give effect to religious liberty and conscience protections related to the provision of abortion services provided explicitly under Title IX, the Department proposes to amend its Title IX regulation to conform to the statute.

In the Final Rule, the Department stated that termination of pregnancy [159] was included as a prohibited basis of discrimination on the basis of sex under the Section 1557 Regulation in order to ''mirror'' the text of the Department's Title IX regulation. 81 FR at 31387 (May 19, 2016) (Section 1557 Final Rule); *see also* 80 FR at 54176 (Sept. 8, 2015) (Section 1557 Proposed Rule). However, the Department did not incorporate relevant abortion exemption language from the text of Title IX itself. 20 U.S.C. 1688.[160] As the *Franciscan Alliance* court noted:

> Title IX prohibits discrimination on the basis of sex, but . . . . categorically exempts any application that would require a covered entity to provide abortion or abortion-related services. 20 U.S.C. 1688. . . . Failure to incorporate Title IX's religious and abortion exemptions nullifies Congress's specific direction to prohibit only the ground proscribed by Title IX. That is not permitted.

Franciscan Alliance, 227 F. Supp. 3d at 690–91.

Proposed ''45 CFR 86.18 Amendments to conform to statutory exemptions.''

To resolve the current litigation, avoid future litigation over the Department's Title IX and Section 1557 regulations, and give effect to the statutory abortion exemption provisions adopted by Congress and relevant rules of construction adopted by Congress, the Department proposes to amend its Title IX regulations at 45 CFR part 86 to add a new Section 86.18.

In proposed § 86.18(a), the Department seeks to codify the abortion exemption to Title IX. The Department proposes to use the text Congress added to Title IX by means of the CRRA—which states that ''Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion,'' Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (codified at 20 U.S.C. 1688)—as the basis of the regulatory text, making the appropriate changes to reflect the difference between the statute and the implementing regulations.

Proposed § 86.18(b) would set forth the rule of construction in Title IX, as added by the CRRA. The Department again proposes to base the regulatory text on the language of the rule of construction adopted by Congress: ''No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion.'' *Id.* at Sec. 8.

In proposed § 86.18(c), the Department proposes to incorporate other relevant laws that may impact the application of the Title IX abortion exemption. This paragraph would incorporate the laws cited by the *Franciscan Alliance* court: the Religious Freedom Restoration Act,[161] the Weldon Amendment,[162] the Coats-Snowe Amendment,[163] and the Church Amendments.[164] *See* 227 F. Supp. 3d at 690–91. The Department also proposes to reference the First Amendment to the U.S. Constitution, the Hyde Amendment,[165] the Helms Amendment,[166] and Section 1303 of the Patient Protection and Affordable Care Act.[167] The Department concludes that all of these statutes establish Congressionally required parameters that may apply to the Department's interpretation, implementation, and enforcement of Title IX.[168]

The Department requests comment on proposed § 86.18.

B. Proposed Conforming Amendments

The Department proposes to amend certain regulations that identify ''sexual orientation'' or ''gender identity'' as prohibited bases of discrimination for certain Department health programs or activities, to the extent that the regulations are not based on independent statutory authority which expressly provides such prohibition. As stated above, Congress through Section 1557 adopted certain nondiscrimination requirements for health programs or activities, any part of which receive Federal financial assistance or programs or activities administered by an Executive agency under Title I of the PPACA or by an entity established under such Title by cross-referencing the grounds for discrimination prohibited by longstanding civil rights laws—namely, race, color, national origin, sex, age, or disability. Neither Section 1557 nor any of those longstanding civil rights laws reference sexual orientation or gender identity.

[156] ''Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities related to an abortion . . . .'' Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (codified at 20 U.S.C. 1688).

[157] 20 U.S.C. 1681(a)(3) (providing that the prohibition of discrimination on the basis of sex ''shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization''); 81 FR 31435 (HHS declines to include a religious exemption in Section 1557).

[158] 227 F. Supp. 3d at 690–671.

[159] Although this proposed rule does not adopt a position on whether discrimination on the basis of termination of pregnancy can constitute discrimination on the basis of sex, it does not mean that OCR could not consider such claims of discrimination, such as discrimination on the basis of miscarriage or discrimination on the basis of medical complications resulting from a termination of pregnancy.

[160] The Civil Rights Restoration Act (CRRA) added the following language to Title IX, ''Nothing in this chapter shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.'' Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (codified at 20 U.S.C. 1688). The CRRA also included a rule of construction stating that ''No provision of this Act or any amendment made by this Act shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion.'' *Id.* at Sec. 8.

[161] 42 U.S.C. 2000bb–1.

[162] *E.g.,* Public Law 114–113, Div. H, sec. 507(d), 129 Stat. 2242, 2649 (2015).

[163] 42 U.S.C. 238n.

[164] 42 U.S.C. 300a–7.

[165] *E.g.,* Consolidated Appropriations Act, 2019, Public Law 115–245, Div. B, sec. 506(a).

[166] *E.g.,* Continuing Appropriations Act, 2019, Public Law 115–245, Div. C, sec. 7018.

[167] 42 U.S.C. 18023.

[168] To the extent the law is found in an appropriations rider, it applies to the Department's interpretation, implementation, and enforcement of Title IX every year that it is enacted.

Moreover, as noted in the preamble to the Final Rule, the current regulation does *not* treat ''an individual's sexual orientation status alone [a]s a form of sex discrimination under Section 1557,'' 81 FR 31390. It is the position of the United States government that Title VII, which is read consistent with or carries over to Title IX when determining the scope of discrimination on the basis of ''sex,'' ''does not reach discrimination based on sexual orientation.'' DOJ Brief for the United States as *Amicus Curiae, Zarda* v. *Altitude Express, Inc.,* No. 15–3775 (2d Cir. July 26, 2017). It is also the position of the United States government that ''Title VII's prohibition on sex discrimination . . . does not encompass discrimination based on gender identity *per se,* including transgender status.'' Memorandum of the Attorney General (Oct. 4, 2017).[169] As discussed above, on April 5, 2019, DOJ filed a brief in *Franciscan Alliance* v. *Azar* on behalf of HHS, reiterating the U.S. Government's position about Title VII, and stating that ''the [Section 1557] Rule's prohibitions of discrimination on the basis of gender identity and, without the accompanying statutory protections, termination of pregnancy are substantively unlawful under the APA.'' [170]

This proposed rule, thus, seeks to amend regulations that identify sexual orientation or gender identity as prohibited bases for discrimination for certain Department funded or administered programs covered by Section 1557 in order to conform them more closely to the prohibited bases for discrimination authorized by Section 1557, and encompassed in the proposed § 92.2, and to conform them with government policy. The provisions proposed to be conformed are:

- 45 CFR 155.120(c)(1)(ii) and 155.220(j)(2), nondiscrimination provisions concerning how States and Exchanges carry out PPACA requirements and how agents or brokers market to individuals they assist with Exchange enrollment or related applications.
- 45 CFR 147.104(e), nondiscrimination provision concerning marketing or benefit design practices of health insurance issuers under the PPACA.
- 45 CFR 156.200(e) and 156.1230(b)(3), nondiscrimination provision concerning the administration of qualified health plans (QHP) by issuers and concerning marketing and other conduct by QHP issuers engaged in direct enrollment of applicants under the PPACA.
- 42 CFR 460.98(b)(3) and 460.112(a), nondiscrimination provisions concerning organizations operating Programs for All-inclusive Care of the Elderly (PACE) programs and participants receiving PACE services under Medicare.
- 42 CFR 438.3(d)(4), 438.206(c)(2), and 440.262, nondiscrimination provisions concerning Medicaid beneficiary enrollment, and promotion and delivery of access and services.

Additionally, the Department proposes to amend its Title IX regulation at 45 CFR 86.31 to remove any potential ambiguity or conflict concerning the current regulation's prohibition of discrimination ''in the application of any rules of appearance.'' Currently, the Department is the only Federal agency with Title IX regulatory language prohibiting discrimination ''against any person in the application of any rules of appearance.'' [171] 45 CFR 86.31(b)(5) (retained from the predecessor 1975 HEW regulation). While ''rules of appearance'' does not appear in Title IX and was never defined in any agency's Title IX regulations, the phrase may cause confusion in the public about Title IX's coverage and compliance responsibilities and has already led to at least one lawsuit.[172] Because this language is not in current regulations of any other agencies, the proposed edit would eliminate the potential for conflicting and inequitable Federal agency enforcement of Title IX. *See Jespersen* v. *Harrah's Operating Co.,* No. 03–15045 (9th Cir. Apr. 14, 2006) (en banc) (finding sex-specific uniform, appearance and grooming standards did not violate Title VII's prohibition on sex discrimination).

C. Technical Amendments

Several technical amendments are proposed to the Department's Section 1557 and Title IX regulations. The Department makes a nomenclature change to replace ''State-based Marketplace SM'' with ''State Exchange'' to conform the proposed rule to CMS regulations. *See* 45 CFR 155.20. The Department also makes a nomenclature change from ''electronic and information technology'' to ''information and communication technology'' [173] and updates the regulatory cross-reference in this definition from the Access Board's former 508 Standards (36 CFR 1194.4) to its revised 508 Standards (36 CFR part 1194, appendix A, E103.4). The Department also inserts cross-references to ADA 2010 Standards, 1991 Standards, and UFAS in the regulatory text concerning accessibility for individuals with disabilities.

The Department proposes to make a conforming amendment to § 86.2, which defines Title IX for purposes of the regulation as certain enumerated provisions in the U.S. Code. When the Department updated its Title IX regulation in 2005 in order to conform to the 1987 CRRA, the Department failed to add all relevant statutory citations, including 20 U.S.C. 1688, which requires neutrality with respect to abortion. *Compare* 70 FR 24314 (May 9, 2005) *with* Public Law 100–259, 102 Stat. 28 (Mar. 22, 1988) (CRRA). The Department's Title IX regulation should encompass all relevant provisions of the statute it is regulating and, accordingly, the Department proposes to edit § 86.2 include references to 20 U.S.C. 1687 and 1688 to correct the omission.

The enforcement section in the Department's Title IX regulation currently only addresses applicable procedures for the interim period between Title IX's ''effective date and the final issuance of a consolidated procedural regulation applicable to Title IX and other civil rights authorities.'' 45 CFR 86.71. The proposed rule would address current enforcement procedures by adopting the same language from the Title IX common rule, which incorporates Title VI procedures.

The proposed rule would also make nomenclature change to the Title IX regulation by replacing ''United States

[169] Memorandum of the Attorney General, (Oct. 4, 2017), *https://www.justice.gov/ag/page/file/1006981/download.*

[170] *See* Defendant's Memorandum in Response to Plaintiffs' Motions for Summary Judgment, *Franciscan Alliance,* No. 7:16–cv–00108–O, at 5 (filed April 5, 2019).

[171] *See, e.g.,* 47 FR 32527 (July 28, 1982) (Department of Education Title IX regulation); 65 FR 52858 (Aug. 30, 2000) (common rule adopted by twenty agencies), 66 FR 4627 (Feb. 20, 2001) (common rule adopted by Department of Energy); 82 FR 46656 (Oct. 6, 2017) (U.S. Department of Agriculture adopting common rule). None of these agency Title IX rules contain any language concerning ''rules of appearance.''

[172] *See* Complaint, *Peltier et al.* v. *Charter Day School,* No. 7:16–CV–30–H, No. 160 (E.D.N.C. Mar. 30, 2017) (citing ''rules of appearance'' in Department of Agriculture's Title IX regulation to challenge a school's girls' dress code for ''subject[ing] them to archaic sex stereotypes about what constitutes appropriate behavior and conduct''); *but see* 82 FR 46655 (Oct. 6, 2017) (by adopting the Title IX common rule, the Department of Agriculture no longer contains language about ''rules of appearance'').

[173] Although the Section 1557 Regulation uses the term ''electronic and information technology'' (EIT) in § 92.204, the Department stated that it would update its nomenclature to the U.S. Access Board's then-proposed new term ''information and communication technology'' (ICT) upon finalization of the U.S. Access Board regulation. 81 FR 31382 (Section 1557 Final Rule). *See also* 82 FR 5790 (Jan. 18, 2017) (Access Board ICT Final Rule).

Commissioner of Education'' with the official's current title, ''Secretary of Education.'' *See* 45 CFR 86.2(n).

V. Interim Treatment of Subregulatory Guidance

Because the enforcement mechanisms of the underlying four civil rights statutes in Section 1557 are already enshrined in the Department's free standing regulations, and implemented and enforced by the Department's Office for Civil Rights, existing sub-regulatory guidance not inconsistent with this rulemaking would not be impacted by this rulemaking. Other subregulatory guidance may, however, be inconsistent with the Department's interpretation of Section 1557 and Title IX, and its requirement to comply with court orders.

Upon publication of this notice of proposed rulemaking, the Department will, as a matter of enforcement discretion, suspend all subregulatory guidance issued before this proposed rule that interprets or implements Section 1557 (including FAQs,[174] letters,[175] and the preamble to the current Section 1557 Regulation) that is inconsistent with any provision in this proposed rule (including the preamble) or with the requirements of the underlying civil rights statutes cross-referenced by Section 1557 or their implementing regulations. This suspension may be revoked wholly or partially at any time before finalization of this proposed rule and will be lifted automatically if this proposed rule is withdrawn. This suspension is consistent with the Attorney General's memorandum of November 16, 2017, stating that, for the Department of Justice, ''guidance may not be used as a substitute for rulemaking and may not be used to impose new requirements on entities outside the Executive Branch. Nor should guidance create binding standards by which the Department will determine compliance with existing regulatory or statutory requirements.''[176] It is also consistent with the Associate Attorney General's memorandum of Jan. 25, 2018, indicating that Department of Justice litigators cannot use noncompliance with guidance documents as the basis for proving violations of law in affirmative civil enforcement cases and may not use its enforcement authority to convert agency guidance documents into binding rules.[177]

VI. Regulatory Impact Analysis

The Department has examined the impacts of the proposed rule as required by Executive Order 12866 on Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993); Executive Order 13563 on Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011); Executive Order 13132 on Federalism, 64 FR 43255 (Aug. 4, 1999); Executive Order 13175 on Tribal Consultation, 65 FR 67249 (Nov. 6, 2000); Executive Order 13771 on Reducing Regulation and Controlling Costs, 82 FR 9339 (Jan. 30, 2017); the Congressional Review Act (Pub. L. 104–121, sec. 251, 110 Stat. 847 (Mar. 29, 1996)); the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (Mar. 22, 1995); the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164 (Sept. 19, 1980); Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (Aug. 16, 2002); Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, 45 FR 72995 (Nov. 2, 1980), and the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

A. Executive Orders 12866 and Related Executive Orders on Regulatory Review

Executive Order 12866 directs 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 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in, Executive Order 12866.

As discussed below, the Department has estimated that the proposed rule will have an effect on the economy greater than $100 million in at least one year in fact it will result in greater than $100 million in savings. Thus, it has been concluded that this proposed rule is economically significant. It has therefore been determined that this proposed rule is a ''significant regulatory action'' (albeit of a deregulatory nature) under Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this proposed rule.

1. Summary of the Proposed Rule

Through Section 1557 of the PPACA, Congress applied certain long-standing civil rights nondiscrimination requirements to any health programs or activities that receive Federal financial assistance, and any programs or activities administered by an Executive agency under Title I of the PPACA or by an entity established under such Title. It did so by cross-referencing the discriminatory grounds prohibited by those longstanding civil rights laws, namely, discrimination on the basis of race, color, national origin, sex, age, or disability, in an array of Federally funded and administered programs or activities. To ensure compliance, Congress dictated that ''[t]he enforcement mechanisms provided for and available under'' such laws ''shall apply for purposes of violations of'' Section 1557. The proposed rule would, thus, eliminate most of the provisions in the current Section 1557 Regulation and return to the enforcement mechanisms provided for, and available under, those existing statutes and the Department's implementing regulations. Specifically, the Department proposes to repeal the provisions which interpret Federal law inconsistently with Federal court opinions or impose burdens that unjustifiably exceed anticipated benefits. These include: The Section 1557 Regulation's inclusion of novel definitions; language access plan provisions; provisions that set forth new requirements for tagline notices, notices of nondiscrimination, and grievance procedures; application of theories and remedies available under a subset of civil rights laws to all of them, without

[174] After publishing the Final Rule, OCR issued guidance explaining that anything printed on an 8.5″ x 11″ sheet of paper is considered ''significant,'' and, thus, must include the tagline notice. *See* OCR, Question 23, General Questions about Section 1557 (May 18, 2017), *https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html; see also* OCR, Sample Covered Entity Tagline Informing Individual with Limited English Proficiency of Language Assistance, *https://cms-drupal-hhs-prod.cloud.hhs.gov/sites/default/files/sample-ce-tagline-english.pdf.* This documents are examples of sub-regulatory guidance that must be suspended under this proposed rule. *See also* OCR, Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements and Sample Nondiscrimination Statement, *https://cms-drupal-hhs-prod.cloud.hhs.gov/sites/default/files/sample-ce-notice-english.pdf;* OCR, Frequently Asked Questions to Accompany the Estimates of at Least the Top 15 Languages Spoken by Individuals with Limited English Proficiency under Section 1557 of the Affordable Care Act, (Sept. 1, 2016), *https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html.*

[175] On July 12, 2012, the OCR Director first announced in a correspondence addressed to a single member of the public that OCR was accepting and investigating complaints of discrimination on the basis of ''actual or perceived sexual orientation or gender identity'' under Section 1557 of the PPACA. OCR Transaction Number 12–00800 (July 12, 2012).

[176] Memorandum of the Attorney General, ''Prohibition on Improper Guidance Documents.'' *https://www.justice.gov/opa/press-release/file/1012271/download.*

[177] Memorandum of the Associate Attorney General, ''Limiting Use of Agency Guidance Documents In Affirmative Civil Enforcement Cases.'' *https://www.justice.gov/file/1028756/download.*

analysis of whether such theories and remedies were available under all such civil rights laws; and, provisions based on legal theories that were inconsistent with (or, at a minimum, unnecessarily duplicated) provisions of long-standing regulations of the underlying civil rights laws cited in Section 1557. Consistent with this approach to the Section 1557 Regulation, the Department proposes to retain certain language and disability access provisions, as well as the assurance of compliance requirements. The proposed rule empowers the Department to continue its robust enforcement of civil rights laws by additionally making it clear that the substantive protections of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, remain in full force and effect.[178] The Department also proposes to make certain conforming changes to regulations across the Department, and to update its underlying Title IX regulation to adopt statutory amendments, in light of the failures noted by the district court in *Franciscan Alliance.*

2. Need for the Proposed Rule

The Department proposes to substantially replace the Section 1557 Regulation, while retaining certain LEP, disability, and assurances of compliance provisions, in order to better comply with the mandates of Congress, relieve approximately $3.6 billion in undue regulatory burdens, further substantive compliance, reduce confusion, and clarify the scope of Section 1557.

As stated above, the proposed rule is needed in part because two Federal district courts have determined that the Department exceeded its authority in promulgating parts of the regulation and have enjoined or stayed it from applying those parts. By substantially repealing most of the Section 1557 Regulation, the Department would revert to statutory interpretations more consistent with the law and with the United States Government's official position on certain of the underlying civil rights statutes, and ultimately allow the Federal courts, in particular, the U.S. Supreme Court, to resolve any dispute about the proper legal interpretation of such statute and, thus, on Section 1557 of the Affordable Care Act.

Additionally, the Department has determined that the Final Rule is duplicative and confusing, has imposed substantial unanticipated burdens, and that its anticipated and unanticipated burdens are not justified.

The Department initially estimated the costs from the Section 1557 Regulation at over $942 million across the first five years. 81 FR 31458–31459. This figure, however, underestimated actual five year costs by at least $2.6 billion, according to the Department's current estimates. Most of this expense is derived from the taglines requirement, which amounts to an annual burden of approximately $147 million (low-end) to $1.34 billion dollars (high-end), before accounting for electronic delivery, for an average annual burden of $0.632 billion per year, and an average five year burden of $3.16 billion after accounting for electronic delivery, as further described in this Regulatory Impact Analysis. Based on the Department's re-examination of the burden on regulated entities, the Department has preliminarily determined that the potential public benefits of imposing such requirements are outweighed by the large costs those requirements impose on regulated entities and other parties.

3. Consideration of Regulatory Alternatives

The Department carefully considered several alternatives, including the option of not pursuing any regulatory changes, but rejected that approach for several reasons.

First, not pursuing any regulatory changes would be inconsistent with the Administration's policies to appropriately reduce regulatory burden, in general, with respect to individuals, businesses and others, and resulting from PPACA specifically. Not pursuing any regulatory change would also be inconsistent with a nationwide preliminary injunction in place against the Department with respect to the inclusion, in the Section 1557 Regulation, of gender identity and termination of pregnancy in the definition of discrimination on the basis of sex.

Second, Federal courts have reached varying conclusions concerning a number of legal positions taken by the Department in the Section 1557 Regulation. The Northern District of Illinois dismissed a plaintiff's claim that the Department created a new enforcement legal standard, because the ''plain and unambiguous'' statutory text of Section 1557 expressly incorporated four distinct enforcement mechanisms. *Briscoe* v. *Health Care Serv. Corp.,* 281 F. Supp. 3d 725, 738 (N.D. Ill. 2017) (dismissing a Section 1557 claim for sex discrimination using a disparate impact standard); *but see Rumble* v. *Fairview Health Servs.,* No. 14–cv–2037 (SRN/FLN) (D.Minn. Mar. 16, 2017) (declining to determine the specific standard on motion to dismiss, rejecting implication Congress meant to create a ''new anti-discrimination framework completely 'unbound by the jurisdiction of the four referenced statutes,' '' but concluding Congress ''likely'' intended a single standard to avoid ''patently absurd consequences''). In addition, Federal courts in California, New York, and Iowa did not recognize disparate impact claims for sex discrimination under Section 1557, because such claims are not cognizable under Title IX. *See Condry* v. *UnitedHealth Group,* No. 3:17–cf–00183–VC (N.D. Calif. June 27, 2018) (Slip. Op. at 7); *Weinreb* v. *Xerox Business Services,* 323 F. Supp. 3d 501, 521 (S.D.N.Y. 2018); *York* v. *Wellmark, Inc.,* No. 4:16–cv–00627–RGE–CFB, Slip. Op. at *30 (S.D. Iowa Sep. 6, 2017). Another court in Pennsylvania indicated that there is no disparate impact claim for discrimination on the basis of race under Section 1557 because such claims are unavailable under Title VI. *See Southeastern Pennsylvania* v. *Gilead,* 102 F. Supp. 3d 688 (E.D. Pa. 2015); *but see Callum* v. *CVS Corp.,* 137 F. Supp. 3d 817 (D.S.C. 2015).

Third, the Department believes that the *status quo* would not address, much less remedy, public confusion regarding complainants' rights, and covered entities' legal obligations. The Department believes that revisiting the rule will address inconsistences between the Department's underlying regulations and with the regulations and actions taken by other components of the Department. As applied to sex discrimination claims, the Department currently employs a definition of discrimination on the basis of sex under Section 1557 and, thus, under Title IX that varies from the practice of other Departments. Moreover, revising the Section 1557 Regulation will allow the Department to resolve current and future complaints of sexual orientation and gender identity discrimination in a manner consistent with other agencies' enforcement efforts under Title IX. If the Department uses interpretations of Title IX that differ from other Departments, and that diverges from the legal interpretation of the U.S. Government, as set forth by DOJ, it would lead to inconsistent outcomes across complainants and covered entities, with

[178] While Section 1557 does not incorporate nondiscrimination provisions by reference to Title VII, it provides that nothing in Title I of the PPACA is to be construed as invalidating or limiting the rights, remedies, procedures, or legal standards available under certain civil rights laws, including Title VII. 42 U.S.C. 18116(b).

the problem being especially acute in cases involving a single covered entity being investigated with respect to the same allegations by multiple Departments that come to different conclusions on effectively the same question.

The Department also considered adding ''gender identity'' and ''sexual orientation'' to a definition of ''sex'' or ''on the basis of sex'' under Title IX. The Department concluded it is inappropriate to do so at this time, in light of the government position on the meaning of discrimination on the basis of sex under Title VII and cases on which the U.S. Supreme Court has granted petitions for writs of certiorari to resolve similar questions in the context of Title VII. As a policy matter, the Department believes State and local entities are better equipped to address issues of gender dysphoria or sexual orientation and the sometimes competing privacy interests with sensitivity, especially when young children or intimate settings are involved. The Department's position will not bar covered entities from choosing to grant protections for sexual orientation and gender identity that are not required by, but do not conflict with, any other Federal law.[179] The Department has also determined that more complex forms of regulation, such as economic incentives or performance objectives, are neither appropriate nor feasible solutions to the problem to be solved.

The Department also considered simply repealing the Section 1557 Regulation *in toto* and not issuing a replacement regulation. Such an approach would be consistent with the Administration's goals of reducing the regulatory burden on covered entities and is allowed under Section 1557, since that provision does not require the Department to issue implementing regulations. However, the Department is committed to vigorous enforcement of civil rights and nondiscrimination laws as directed by Congress. Additionally, it believes that certain provisions—such as those addressing the assurance of compliance with Section 1557, effective communication and accessibility for individuals with disabilities, and certain language access services—address applications of civil rights laws without the statutory or legal conflicts or excessive regulatory burdens entailed by other provisions of the current Rule.

The Department considered retaining the provision on visual standards for video remote interpreting services for LEP individuals. However, the burden of requiring covered entities to provide video technology training and utilize expensive software does not appear to be justified based on minimal benefit to language speakers who can effectively communicate when there is clear audio transmission through the remote interpreting service.

Accordingly, the Department believes it is appropriate to clarify how the Office for Civil Rights would enforce the PPACA's nondiscrimination protections by replacing the Section 1557 Regulation with regulatory provisions (1) explicitly applying the enforcement mechanisms provided under the civil rights statutes and related implementing regulations cited by Section 1557 to the health contexts identified in Section 1557, (2) vesting enforcement authority under Section 1557 with the Director of the Office for Civil Rights, and (3) specifying how Section 1557 enforcement shall interact with existing laws—while retaining certain language and disability access provisions and the assurances provision.

With respect to the requirement that covered entities provide nondiscrimination notices and taglines, the Department considered keeping the requirement but limiting the frequency of required mailings to one per year to each person served by the covered entity. To estimate the cost of this option, the Department adopted the base assumptions described in this Regulatory Impact Analysis regarding the number of covered entities and the average unit cost associated with the low-end and high-end costs of a notice and tagline mailing (materials, postage, and labor).[180] The Department adjusted the volume of mailings based on the average number of individuals served by each covered entity.[181] The Department assumed the same covered entity compliance rate for the insurance industry as under this Regulatory Impact Analysis but assumed an increased compliance rate for non-insurers (assuming 30% instead of 10%) to reflect that more entities would likely comply with the requirements if the burden were to be significantly reduced to one mailing per customer/patient per year. Based on this method, the estimated total cost of this alternative is approximately $63 million per year. Although this option poses a significantly reduced burden, the Department believes the costs under this alternative still outweigh the benefits because such mass multi-language taglines mailings would still be received overwhelmingly by English speakers and because the requirement to issue non-discrimination notices would be largely duplicative of non-discrimination notice requirements that already exist under Section 1557's underlying civil rights regulations.[182]

The Department invites comment on its proposed approach, as well as the other approaches considered by the Department.

4. Considerations for Cost-Effective Design

In this proposed rule, the Department proposes to substantially replace most of the Section 1557 Regulation, so as to significantly reduce the regulatory burden of compliance and to return to the pre-existing understanding of the underlying nondiscrimination obligations imposed by the civil rights laws referenced by Section 1557.

In the preamble to the Final Rule, the Department observed there were pre-existing requirements under Federal civil rights laws that, ''except in the area of sex discrimination,'' applied to a large percentage of entities covered by the Final Rule. 81 FR at 31446. Thus, in the Final Rule the Department concluded it did not expect covered entities to undertake additional costs with respect to the prohibitions on discrimination on the basis of race, color, national origin, age, or disability discrimination, ''except with respect to the voluntary development of a language access plan.'' *Id.*

By proposing to repeal the Section 1557 Regulation's novel definition of sex discrimination and to eliminate the notices, taglines, visual standards in video remote interpreting services for

[179] Policies of covered entities that result in unwelcome exposure to, or by, persons of the opposite biological sex where either party may be in a state of undress—such as in changing rooms, shared living quarters, showers, or other shared intimate facilities—may trigger hostile environment concerns under Title IX. *United States* v. *Virginia,* 518 U.S. 515, 550 n.19 (1996) (''Admitting women to [an all-male school] would undoubtedly require alterations necessary to afford members of each sex privacy from the other sex in living arrangements''); *Fortner* v. *Thomas,* 983 F.22d 1024, 1030 (11th Cir. 1993) (''[M]ost people have a special sense of privacy in their genitals, and involuntary exposure of them in the presence of people of the other sex may be especially demeaning or humiliating.'').

[180] The average of the low ($0.035) and high ($0.32) unit costs is $0.18 per notice and tagline mailing.

[181] The estimated volume is expected to vary based on covered entity type. For instance, each of the 180 health insurance issuers serve 685,138 individuals on average, based on the number of insured individuals (123 million), which equates to 685,138 mailings per issuer. Each of the 185,649 physicians' offices serve 1,703 individuals, based on the average number of individuals (316 million) associated with 990 million physicians visits. On average, each covered entity serves about 3,000 persons per entity, which equates to 3,000 mailings per entity, based on 820 million persons served by 275,002 covered entities.

[182] *See* 45 CFR 80.6(d) (Title VI), 84.8 (Section 504), 86.9 (Title IX), 91.32 (Age Act).

LEP individuals, language access plans, and duplicative grievance procedures requirements, the proposed rule would also allow covered entities the freedom to order their operations efficiently, flexibly, and in a cost-effective manner.

Accordingly, returning to the familiar pre-existing requirements and eliminating novel requirements not contemplated nor allowed by Section 1557 is a cost-effective way of (1) removing the unjustified burdens imposed by the Section 1557 Regulation; (2) reducing confusion among the public and covered entities; (3) promoting consistent, predictable, and cost-effective enforcement; and (4) creating space for innovation in the provision of compliant services by covered entities (including flexible and innovative language access practices and technology), while faithfully and vigorously enforcing Section 1557's civil rights protections.

5. Methodology for Cost-Benefit Analysis

For purposes of this Regulatory Impact Analysis (RIA), the proposed rule adopts the list of covered entities and other costs assumptions identified in the 2016 RIA for the Final Rule. The use of assumptions from the 2016 rulemaking in the present RIA, however, does not mean that the Department adopts those assumptions in any respect beyond the purpose of estimating (1) the number of covered entities that would be relieved of burden, and (2) cost relief. For example, the 2016 rulemaking based several cost estimates on an expansive definition of Federal financial assistance, which significantly impacted the number of covered entities currently burdened by the Final Rule; thus, it is appropriate to use that definition for estimating cost relief.[183] Such use, however, should not be interpreted as an endorsement or acceptance of the definitions for any other purpose. Moreover, the existing definition of Federal financial assistance under the Section 1557 Regulation is proposed to be repealed in this NPRM.

The Department also does not ''carry over'' every assumption from the 2016 Section 1557 Regulation for this NPRM's RIA calculation purposes. Most notably, the Department no longer considers its prior estimates of costs imposed due to the current Section 1557 Regulation's taglines requirement accurate or valid, and provides a more thorough and accurate estimate for purposes of this NPRM.

Cost savings result from the repeal of (1) the provision on the incentive for covered entities to develop language access plans and (2) the provisions on notice and taglines. In addition, the Department quantitatively analyzes and monetizes the impact that this proposed rule may have on covered entities' voluntary actions to re-train their employees on, and adopt policies and procedures to implement, the legal requirements of this proposed rule. The Department analyzes the remaining benefits and burdens qualitatively because of the uncertainty inherent in predicting other concrete actions that such a diverse scope of covered entities might take in response to this proposed rule. The Department requests all relevant information or data that would inform a quantitative analysis of proposed reforms that the Department qualitatively addresses in this RIA.

6. Cost-Benefit Analysis

a. Overview

In 2016, the Department estimated $942 million [184] in costs (over five years) for the Section 1557 Regulation due to impacts on personnel training and familiarization, enforcement, posting of nondiscrimination notices and taglines, and revisions in covered entity policies and procedures. 81 FR 31446, and 31458–31459 (at Table 5). As stated earlier, the Department estimated in its 2016 rulemaking that these costs would arise *primarily* from requirements imposed by the Section 1557 Regulation with which covered entities were not already complying.[185] The Department specifically identified the Final Rule's interpretation of sex discrimination to cover gender identity and sex stereotyping,[186] and the Final Rule's consideration of language access plans for compliance purposes, as provisions triggering the imposition of new costs.[187] *See* 81 FR 31459—Table 5.

In 2016, the Department estimated that the Final Rule's nondiscrimination notice requirement would impose approximately $3.6 million in one-time additional costs on covered entities. 81 FR at 31469. Regarding these requirements, the Department stated: ''We are uncertain of the exact volume of taglines that will be printed or posted, but we estimate that covered entities will print and post the same number of taglines as notices and therefore the costs would be comparable to the costs for printing and disseminating the notice, or $3.6 million.'' 81 FR at 31469. Thus, the total notice and tagline cost was estimated at $7.2 million in the first year and was predicted to go down to zero after year one despite the regulatory requirement for covered entities to provide notices and taglines to beneficiaries, enrollees, and applicants by appending notices and taglines to all ''significant publications and significant communications'' larger than postcards or small brochures. *Compare* 81 FR 31458 (Table 5), *with* 45 CFR 92.8.

For reasons explained more fully below, the 2016 estimate of $7.2 million in one-time costs stemming from the notice and taglines requirement was a gross underestimation, and thus this proposed rule's elimination of those requirements would generate a large economic savings of approximately $3.6 billion over five years based on the proposed repeal of the notice and taglines provision.

[183] The Department seeks public comment in particular on one aspect of the Final Rule where there was no estimate of the number of impacted entities: The number of religious organizations that provide health services and receive Federal financial assistance from the Department. The Department seeks public comment to better estimate the impact of the proposed rule on such religious entities, and the impact of any applicable religious exemptions that might change the effect of the proposed rule on those entities.

[184] Throughout the regulatory impact analysis in the Section 1557 Regulation, the 2016 estimates used 2014 dollars unless otherwise noted.

[185] 81 FR 31446 (''to the extent that certain actions are required under the final rule where the same actions are already required by prior existing civil rights regulations, we assume that the actions are already taking place and thus that they are not a burden imposed by the rule'').

[186] 81 FR 31455 (''Although a large number of providers may already be subject to State laws or institutional policies that prohibit discrimination on the basis of sex in the provision of health services, the clarification of the prohibition of sex discrimination in this regulation, particularly as it relates to discrimination on the basis of sex stereotyping and gender identity, may be new.'').

[187] Although the Final Rule did not require covered entities to develop a language access plan, the Rule stated that the development and implementation of a language access plan is a factor the Director ''shall'' take into account when evaluating whether an entity is in compliance with Section 1557. 45 CFR 92.201(b)(2). Therefore, the Department anticipated that 50% of covered entities would be induced to develop and implement a language access plan following issuance of the Final Rule. 81 FR 31454.

TABLE 1—ACCOUNTING TABLE OF BENEFITS AND COSTS OF ALL PROPOSED CHANGES

[In millions]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Savings:						
Total (undiscounted)	$807	$789	$770	$751	$733	$3,850
Total (3%)	696	660	626	593	562	3,137
Total (7%)	575	525	479	437	399	2,416
Costs—Quantified Costs:						
Total (undiscounted)	276	0	0	0	0	276
Total (3%)	238	0	0	0	0	238
Total (7%)	197	0	0	0	0	197
Net Total (undiscounted)						3,574

Non quantified benefits and costs are described below.

b. Generally Applicable Tangible and Intangible Benefits and Burdens

The proposed rule would result in other tangible benefits for covered entities. First, because the proposed rule is simple and easily administrable, it would be less likely that covered entities would need to pay for legal advice or otherwise expend organizational resources to understand their obligations under Section 1557, either in general or with respect to any particular situation that arises. Second, the proposed rule would eliminate the need for covered entities to expend labor and money on an ongoing basis to maintain internal procedures for mitigating the legal risk that persists due to unresolved controversy over the meaning of Section 1557. The Department solicits comment regarding the nature and magnitude of such ongoing costs incurred by covered entities.

The proposed rule would also carry intangible benefits, most important of which is that covered entities would enjoy increased freedom to adapt their Section 1557 compliance programs to most efficiently address their particular needs, benefiting both covered entities and individuals. The value of knowledge of civil rights is difficult to quantify. Covered entities would be free under the proposed rule to implement policies and procedures that comply with Federal civil rights laws in creative, effective, and efficient ways that are tailored to the covered entities and the communities that they serve.

The Section 1557 Regulation likely induced many covered entities to conform their policies and operations to reflect gender identity as protected classes under Title IX. The Department anticipates that, as a result of the proposed rule, some—but not all—covered entities may revert to the policies and practices they had in place before the agency actions that created confusion regarding Title IX's definition of discrimination on the basis of sex.[188] Such a reversion may naturally entail amending organizational nondiscrimination policies and training materials, and communicating those changes to employees. The process of voluntarily reverting to previous practices would cost covered entities some time and money. In addition, the Department believes that, under the proposed rule, some covered entities would no longer incur labor costs pursuant to the Section 1557 Regulation associated with processing grievances related to sex discrimination complaints as they relate to gender identity under Title IX because such claims would not be cognizable under the proposed rule.

The Department, however, is uncertain as to the total number of covered entities that would change their policies and grievance processes to reflect the understanding of sex discrimination set forth in this proposed rule. It anticipates that such changes would be influenced by a number of factors, including applicable State and local laws, along with the covered entities' experiences in implementing the previous definition. Accordingly, the Department, at this time, cannot estimate the number of covered entities that would revert to the previous interpretation of ''sex'' under their internal policies and operations and the related cost and benefits from such change in behavior. The Department solicits public comments and data on this question.

Consequently, the Department also lacks the data necessary to estimate the number of individuals who currently benefit from covered entities' policies governing discrimination on the basis of gender identity who would no longer receive those benefits as a consequence of the rule—notwithstanding that nothing in the rule precludes covered entities from continuing such policies voluntarily. The Department seeks comments on this question.

The Department also solicits comments regarding this and other intangible benefits that would be conferred by this proposal.

c. Baseline Assumptions

The following discussion identifies the economic baseline from which the Department measures the expected costs and benefits of the proposed rule. Its baseline includes the cost estimates in the Final Rule, in addition to data it has gathered since the Final Rule was implemented, as described in more detail below.

Key assumptions include the following: (1) The Final Rule triggered significant voluntary activity on the part of covered entities, generating both costs and benefits; (2) covered entities were already complying with civil rights laws and related regulations that were in effect before the Final Rule and, thus, the proposed rule does not impose any new burden by reaffirming the requirements of those laws; (3) the projected costs from the Final Rule for years 1 and 2 have been incurred, and the projected costs from years 3, 4, and 5 have not been incurred; (4) repeal of the Final Rule's notice and taglines requirements would not affect notice or tagline requirements required by Centers for Medicare & Medicaid Services guidance or regulations that do not reference, rely on, or depend upon the taglines requirements of the Final Rule; (5) a relatively small percentage of physicians and hospitals currently append notices and taglines to billing statements sent to patients, while all insurance companies append notices and taglines to their explanations of benefits statements; and (6) covered employers are more likely to train

[188] Covered entities located in jurisdictions that prohibit sexual orientation and gender identity discrimination under State or local laws likely already have policies, training, or grievance procedures concerning sexual orientation and gender identity and likely would not change their policies under the proposed rule.

employees who interact with the public than those who do not.

d. Covered Entities

(1) Entities Covered by Section 1557

The Final Rule and the proposed rule replacing Section 1557 apply to any entity that has a health program or activity, any part of which receives Federal financial assistance from the Department, any program or activity administered by the Department under Title I of the PPACA, or any program or activity administered by an entity established under such Title. Covered entities under the current rule's definition [189] include:

(a) Entities With a Health Program or Activity, Any Part of Which Receives Federal Financial Assistance From the Department

The RIA for the Final Rule stated that the Department, through agencies such as the Health Resources and Services Administration (HRSA), the Substance Abuse and Mental Health Services Administration (SAMHSA), the Centers for Disease Control and Prevention (CDC), and the Centers for Medicare & Medicaid Services (CMS), provides Federal financial assistance through various mechanisms to health programs or activities of local governments, State governments, and the private sector. An entity may receive Federal financial assistance from more than one component in the Department. For instance, federally qualified health centers receive Federal financial assistance from CMS by participating in Medicaid programs and may also receive Federal financial assistance from HRSA through grant awards. Because more than one funding stream may provide Federal financial assistance to an entity, the examples we provide may not uniquely capture entities that receive Federal financial assistance from only one component of the Department. Under the Final Rule, the covered entities consisted of the following:

(i) Entities receiving Federal financial assistance through their participation in Medicare (excluding Medicare Part B) or Medicaid (about 133,343 facilities).[190] Examples of these entities cited in the 2016 RIA include:

- Hospitals (includes short-term, rehabilitation, psychiatric, and long-term)
- Skilled nursing facilities/nursing facilities (facility-based and freestanding)
- Home health agencies
- Physical therapy/speech pathology programs
- End stage renal disease dialysis centers
- Intermediate care facilities for individuals with intellectual disabilities
- Rural health clinics
- Physical therapy—independent practice
- Comprehensive outpatient rehabilitation facilities
- Ambulatory surgical centers
- Hospices
- Organ procurement organizations
- Community mental health centers
- Federally qualified health centers

(ii) Laboratories that are hospital-based, office-based, or freestanding that receive Federal financial assistance through Medicaid payments for covered laboratory tests (about 445,657 laboratories with Clinical Laboratory Improvement Act certification).

(iii) Community health centers receiving Federal financial assistance through grant awards from HRSA (1,300 community health centers).[191]

(iv) Health-related schools in the United States and other health education entities receiving Federal financial assistance through grant awards to support 40 health professional training programs that include oral health, behavioral health, medicine, geriatric, and physician's assistant programs.[192]

(v) State Medicaid agencies receiving Federal financial assistance from CMS to operate CHIP (includes every State, the District of Columbia, Puerto Rico, Guam, the Northern Marianas, U.S. Virgin Islands, and American Samoa).

(vi) State public health agencies receiving Federal financial assistance from CDC, SAMHSA, and other HHS components (includes each State, the District of Columbia, Puerto Rico, Guam, the Northern Marianas, U.S. Virgin Islands, and American Samoa).

(vii) Qualified health plan issuers receiving Federal financial assistance through advance payments of premium tax credits and cost-sharing reductions (which include at least the 169 health insurance issuers in the Federally-facilitated Exchanges receiving Federal financial assistance through advance payments of premium tax credits and cost sharing reductions and at least 11 health insurance issuers operating in the State Exchanges).[193]

(viii) Physicians receiving Federal financial assistance through Medicaid payments, ''meaningful use'' payments, and other sources, but not Medicare Part B payments; Medicare Part B payments to physicians are not Federal financial assistance. The Medicare Access and CHIP Reauthorization Act amended Section 1848 of the Act to sunset ''meaningful use'' payment adjustments for Medicare physicians after the 2018 payment adjustment.

In the 2016 rulemaking, the Department estimated that the Final Rule likely covers almost all licensed physicians because they accept Federal financial assistance from sources other than Medicare Part B. Many physicians participate in more than one Federal, State, and local health program that receives Federal financial assistance, and many practice in several different settings which increases the possibility that they may receive payments constituting Federal financial assistance.

For the sake of consistency and convenience, the Department uses the 2016 RIA estimate of the number of physicians receiving Federal financial assistance. As the 2016 RIA noted, based on 2010 Medicaid Statistical Information System data (the latest available), about 614,000 physicians accept Medicaid payments and are covered under Section 1557 as a result.[194] This figure represents about 69% of licensed physicians in the United States when compared to the 890,000 licensed physicians reported in the Area Health Resource File.[195] In addition, physicians receiving Federal payments from non-Part B Medicare sources will also come under Section 1557. The 2016 RIA noted that, as of

[189] As noted above, we use the list and number of covered entities and other figures from the 2016 Final Rule's RIA in this RIA for the sake of consistency and convenience, but such use does not mean that we adopt or accept any of the underlying analysis, definitions, or assumptions from the Final Rule's RIA for any other purpose related to this proposed rule.

[190] CMS, Provider of Service file (June 2014), *https://www.cms.gov/Research-Statistics-Data-and-Systems/Downloadable-Public-Use-Files/Provider-of-Services/POS2014.html.*

[191] HRSA, Justification of Estimates for Appropriation Committee For Fiscal Year 2016, 53, *http://www.hrsa.gov/about/budget/budgetjustification2016.pdf.*

[192] HRSA, Justification of Estimates for Appropriation Committee For Fiscal Year 2016, 53, *http://www.hrsa.gov/about/budget/budgetjustification2016.pdf.*

[193] Qualified Health Plans Landscape Individual Market Medical (2015), *https://data.healthcare.gov/dataset/2015-QHP-Landscape-Individual-Market-Medical/mp8z-jtg7.*

[194] John Holahan and Irene Headen, Kaiser Commission on Medicaid and the Uninsured, Medicaid Coverage and Spending in Health Reform: National and State-by-State Results for Adults at or Below 133% FPL (2010), *https://kaiserfamilyfoundation.files.wordpress.com/2013/01/medicaid-coverage-and-spending-in-health-reform-national-and-state-by-state-results-for-adults-at-or-below-133-fpl.pdf.* Estimates are based on data from FY 2010 MSIS.

[195] HRSA, Area Health Resource Files (2015), *http://ahrf.hrsa.gov.*

January 2014, 296,500 Medicare-eligible professionals had applied for funds to support their ''meaningful use'' technology efforts.[196] Adding the approximately 614,000 physicians who receive Medicaid payments to the 296,500 physicians who receive meaningful use payments yields over 900,000 physicians potentially reached by Section 1557 because they participate in Federal programs other than Part B of Medicare. Because physicians can receive both Medicaid and meaningful use payments, and these figures are not adjusted for duplication, the 900,000 result is best interpreted as an upper bound.

When the Department compared the upper bound estimated number of physicians participating in Federal programs other than Medicare Part B (over 900,000) to the number of licensed physicians counted in HRSA's Area Health Resource File (approximately 890,000), and allowing for duplication in both the Medicare/Medicaid and HRSA numbers,[197] the Department concluded in the 2016 RIA that almost all practicing physicians in the United States are reached by Section 1557 because they accept some form of Federal remuneration or reimbursement apart from Medicare Part B.

The Department invites the public to submit information regarding physician participation in health programs or activities that receive Federal financial assistance.

(b) Programs or Activities Administered by the Department Under Title I of the PPACA

This proposed rule applies to programs or activities administered by the Department under Title I of the PPACA. Such programs or activities include temporary high risk pools (section 1101), temporary reinsurance for early retirees (section 1102), Department mechanisms for identifying affordable health insurance coverage options (section 1103), the wellness program demonstration project (section 1201, adding Public Health Service (PHS) Act 2705(*l*)), the provision of community health insurance options (section 1323), and the establishment of risk corridors for certain plans (section 1342).

(c) Entities Established Under Title I of PPACA

This proposed rule applies to the health insurance exchanges established under Title I of PPACA. Such exchanges currently include the 12 State Exchanges, 5 State Exchanges on the Federal platform and 34 Federally-facilitated Exchanges.[198] Title I additionally establishes State advisory councils concerning community health insurance (section 1323) and certain reinsurance entities under the transitional reinsurance program (section 1341).

(2) Entities Covered by Title IX

Title IX applies to recipients of Federal financial assistance for education programs or activities. 20 U.S.C. 1681. The population of applicable covered entities is defined by the term ''recipient'' in the Department's Title IX regulations. The population includes any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof. *See, e.g.,* 45 CFR 86.2. Under the definition of program or activity, recipients of Federal financial assistance within the scope of Title IX may include colleges, universities, local educational agencies, vocational education systems, or other entities or organizations principally engaged in the business of providing education. *See, e.g.,* 45 CFR part 86, appendix A (cross-referencing appendix B to 45 CFR part 80).

e. Cost Savings From Eliminating Notice and Taglines Requirement

The Department's baseline for calculating the savings from repealing the notice and taglines requirement includes approximately $0.632 billion in additional average annual costs from the requirement that were not considered in the 2016 rulemaking. It is important to note that, while industry estimates prompted the Department to reassess the burdens imposed by the Final Rule, the Department conducted and relied upon its own cost analysis in developing the RIA for this proposed rule.

The Final Rule assessed $7.1 million for covered entities and $70,400 for the Federal government in combined annual costs for printing and distributing nondiscrimination notices and taglines, with the costs being apportioned roughly equally between notices and taglines. 81 FR 31453. As explained in detail below, the Department estimates the combined notice and taglines requirement actually costs covered entities hundreds of millions of dollars per year, as explained in this analysis.

The Final Rule requires covered entities to include a notice and taglines for any ''significant'' document or publication, but did not define the term ''significant.'' 45 CFR 92.8(f)(1)(i).[199] Thus, covered entities have reasonably interpreted this provision to require a notice and taglines to accompany many communications from covered entities, including annual benefits notices, medical bills from hospitals and doctors, explanations of benefits from health insurance companies or health plans, and communications from pharmacy benefit managers.

Covered entities such as plan administrators and pharmacy benefit managers have reasonably interpreted this guidance to require a notice and taglines for an extraordinary amount of mailed communications, including every auto-ship refill reminder, formulary notice, and specialty benefit letter. Further, some other entities that operate in multiple States have interpreted the Final Rule as requiring them to include taglines for as many as 60 languages, or to include that many taglines in mailed communications due to the cost or technical barriers to customizing mailing inserts on a State-by-State basis and, thus, have incurred costs to send up to an additional two double-sided pages of notices with each communication.[200]

To estimate the volume of notices and taglines that accompany an annual

[196] Mynti Hossain and Marsha Gold, Mathematical Policy Research Inc.: Prepared for The Office of the National Coordinator for Health Information Technology, HHS, Monitoring National Implementation of HITECH: Status and Key Activity Quarterly Summary (Jan. to Mar. 2014), *http://www.healthit.gov/sites/default/files/globalevaluationquarterlyreport_januarymarch2014.pdf.*

[197] The Area Health Resource File itself double counts physicians who are licensed in more than one State.

[198] CMS, State-Based Exchanges for Plan Year 2018 (Nov. 13, 2018), *https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/state-marketplaces.html.*

[199] After publishing the Final Rule, OCR issued guidance explaining that any significant publication printed on an 8.5 × 11 sheet of paper is not considered small sized and, thus, must include a minimum of 15 taglines. *See* OCR, Question 23, General Questions about Section 1557 (May 18, 2017), *https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html.*

[200] Although OCR has issued guidance stating that a covered entity may identify the top 15 languages spoken across all the States that the entity serves, *see https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/aggregation_tagline/index.html,* evidence of notices that some covered entities shared with OCR suggests covered entities with beneficiaries in multiple States may issue more comprehensive tagline notices exceeding 15 languages, likely because of reasonable interpretations of the relevant provisions of the Final Rule.

benefits notice, we began with the approximately 300 million persons in the United States who have health insurance,[201] or approximately 91% of the U.S. population. The Department then assumed that the annual notice of benefits (that includes a notice and taglines) is sent to each policyholder, not to each individual member of a covered household, such as covered children. Of the total U.S. population, 306 million individuals belong to 117.7 million households. For the data set relied on, a ''household'' includes ''all the people who occupy a housing unit. . . . The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated people[202] who share living arrangements.''[203] By implication, 17.3 million individuals do not belong to a household,[204] and live in group quarters.[205] The Department assumed that the percentage of the U.S. population that is uninsured, 9%, is the same percentage of U.S. individuals belonging to U.S. households that are uninsured. To calculate the number of annual benefits notices, the Department added the total number of individuals that do not belong to a household (17.3 million) to the total number of households (117.7 million), and discounted the sum (135 million) by 9% to exclude those individuals who are not insured. The total number of annual notices of benefits that include a nondiscrimination notice and taglines is therefore approximately 123 million (approximately 91% of 135 million).

To estimate the volume of notices and taglines that accompany auto-reenrollment communications from the health insurance Exchanges, the Department assumes the Exchanges send these communications to the 11.8 million individuals enrolled in the individual market.[206] It assumes that the Exchanges send out approximately 1.5 notices per person per year. This accounts for the annual re-enrollment communication plus additional communications Exchanges will send for special enrollment periods. Thus, the total estimated volume of notices and taglines attributable to the Exchanges is 17.7 million.

To estimate the volume of notices and taglines that accompany hospital bills and explanations of benefits sent by insurance companies (or health plans) for hospital admissions, the Department first estimated the total number of hospital bills and explanation of benefits that would be sent to patients annually. There are 35,158,934 million hospital admissions per year.[207] For the purpose of this estimate, the Department assumes that each admission generates three bills from one hospital visit—each of which would include a notice and tagline document, for a total of 105,476,802 bills (35,158,934 admissions times three bills per admission).[208] The Department assumes that 10% of the 105,476,802 bills will have a notice and tagline document attached, for a total of 10,547,680 notice and tagline documents.

For patients who were insured upon admission to the hospital, in addition to the three hospital bills they would receive (on average), they would receive three associated explanations of benefits from their insurer or health plan, each of which would also include notice and tagline documents. If more than three service providers bill a patient for a hospital visit, then the savings associated with this patient encounter would be greater than estimated due to the additional notice and tagline documents that the insurer would send with each additional explanation of benefits beyond the initial three assumed. If less than three service providers bill for a hospital visit, then the savings would be less due to the decreased volume of notice and tagline documents that the insurer would send given that the insurer would send fewer than three explanation of benefits. Given that approximately 91% of the U.S. population is insured, the Department estimates that approximately 32,104,054 admissions of the 35,158,934 million hospital admissions are associated with insured patients (91% of 35,158,934 million hospital admissions).[209] This assumption does not account for variation in health care consumption between the insured and uninsured populations. It is possible that more hospital admissions are attributable to the uninsured than the insured population. If such is the case, the Department's estimate for the number of notices and taglines attributable to explanations of benefits would be lower. Further, this estimate does not account for outpatient hospital visits, which would increase the volume of notices and taglines.

As discussed further below, the Department assumes 100% of insurance companies are compliant with the notice and taglines requirement. Thus, approximately 96 million notice and tagline documents are attributable to the explanations of benefits sent by insurers (32,104,054 admissions times three explanation of benefits). Using rounded values, approximately 107 million additional notices and taglines (96 million plus 11 million) are related to hospital admissions.

To estimate the volume of notices and taglines that accompany doctor's bills and explanations of benefits from a physician's visit, the Department relied on data showing that individuals visit a doctor approximately 990 million times each year.[210] Given that approximately

[201] Calculated by subtracting total uninsured population (28.1 million as of 2016), *see https://www.census.gov/library/publications/2017/demo/p60-260.html,* from the total U.S. Population (327,350,075 as of March 14, 2018), *see https://www.census.gov/popclock.*

[202] The calculations do not take into account households where two or more unrelated persons have individual coverage, and thus receive separate annual notices at the same household. The Department believes, however, that this exclusion has only a minor impact on the overall figures but welcome comments on whether they should be included.

[203] U.S. Census Bureau, American Community Survey and Puerto Rico Community Survey 2016 Subject Definitions 76, *https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2016_ACSSubjectDefinitions.pdf* (defining ''household'' under ''Household Type and Relationship'').

[204] The Department subtracted 306 million individuals belonging to a household from the total US population in of 323.4 million individuals. See U.S. Census Bureau, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk* (relied on 2016 population nationally).

[205] U.S. Census Bureau, American Community Survey and Puerto Rico Community Survey 2016 Subject Definitions 76, *https://www2.census.gov/programs-surveys/acs/tech_docs/subject_definitions/2016_ACSSubjectDefinitions.pdf* (''People not living in households are classified as living in group quarters.''). ''Group quarters include . . . college residence halls, . . . skilled nursing facilities, . . . correctional facilities, and workers' dormitories.'' U.S. Census Bureau, 2016 American Community Survey/Puerto Rico Community Survey Group Quarters Definitions, 1 *https://www2.census.gov/programs-surveys/acs/tech_docs/group_definitions/2016GQ_Definitions.pdf.*

[206] *See* CMS, *Health Insurance Exchanges 2018 Open Enrollment Period Final Report* (Apr. 3, 2018), *https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2018-Fact-sheets-items/2018-04-03.html.*

[207] CDC, Chartbook on Long-Term Trends in Health (2016), *http://www.cdc.gov/nchs/data/hus/hus16.pdf#317.*

[208] The Department presumes one hospital visit likely will generate a bill from the physician and two bills from any combination of services, such as anesthesia, ambulance service, imaging/radiology, or laboratory or blood work.

[209] Calculated by subtracting total uninsured population (28.1 million as of 2016), *see https://www.census.gov/library/publications/2017/demo/p60-260.html,* from the total U.S. Population in 2016 (323,405,935), *see https://www.census.gov/popclock.* The Department also notes that Gallup recently conducted a study that shows that 12.2% of the U.S. Population is uninsured. *See* Zac Auter, U.S. Uninsured Rate Steady at 12.2% in Fourth Quarter of 2017 (Jan. 16, 2016), *http://news.gallup.com/poll/225383/uninsured-rate-steady-fourth-quarter-2017.aspx?g_source=Well-Being&g_medium=newsfeed&g_campaign=tiles.*

[210] CDC, Ambulatory Care Use and Physician Office Visits (2016), *https://www.cdc.gov/nchs/fastats/physician-visits.htm.* As noted above, the

Continued

9% [211] of Americans are uninsured, the Department assumes (and subtracting an estimated 5% for uninsured patients who do not visit the doctor, except in an emergency), 95% of individuals who see doctors every year are insured in some form. The Department assumes that each visit to a compliant doctor's office will generate at least one bill from the doctor and at least one explanation of benefits from the health insurance company. As explained below, it also assumes that 10% of doctors and 100% of insurance companies comply with the notice and taglines requirement. Thus, approximately 99 million notices and taglines are attributable to doctors billing the patients directly and approximately 941 million are attributable to explanations of benefits sent by insurers which results in a total of 1.04 billion additional notices and taglines related to physician visits. The Department seeks comment on these cost estimates, the frequency of communications to which taglines and notices are sent, and how often insurers mail (other otherwise, provide copies in person or via electronic delivery) documents to the ensured.

Because experience and substantial feedback from health care insurers suggests a very high degree of compliance with the notice and taglines requirements concerning documents such as explanations of benefits, the Department has presumed 100% compliance for purposes of this RIA. Anecdotal evidence, however, suggests that hospital and physician compliance with the notice and tagline requirements in the documents discussed above is not standard industry practice. The Department estimates that, at most, 10% of such covered entities include notices and taglines in their significant mailed communications with patients. While, according to the 2016 RIA, most hospitals and physicians are covered entities under Section 1557, the Department believes their failure to adopt notices and taglines as a standard billing and communication practice may be due to the fact the notice and taglines requirement in the Final Rule mentions a duty to notify ''beneficiaries, enrollees, applicants, and members of the public'' and does not explicitly mention ''patients.'' 45 CFR 92.8(a). Additionally, the preamble to the Final Rule explained that the notice and taglines requirement covered communications ''pertaining to rights or benefits'' which insurance companies have universally interpreted as applying to significant numbers of communications they send to beneficiaries. 81 FR 31402. For these reasons, the Department's calculations presume a 10% compliance rate for hospitals and physicians and a 100% compliance rate by health insurance companies concerning the notice and taglines requirement as it relates to bills and explanations of benefits, respectively.

To estimate the volume of notices and taglines that accompany pharmacy-related communications, the Department relied on estimates from the Pharmaceutical Care Management Association, which, due to the nature of its organization, obtained an estimated number of impacted beneficiaries from its member organizations. Approximately 173 million beneficiaries are being impacted annually by the notice and taglines requirement, and these beneficiaries receive between 6 and 28 communications per year with an accompanying notice and taglines. The Department relied the average of this estimate (17 communications per year per beneficiary) to determine that 2.9 billion prescription-related communications (*e.g.,* communications from pharmacy benefit managers) are sent each year.[212]

The Department seeks comment on these calculations. In particular, it requests that commenters identify significant communications sent by covered entities that include a notice and taglines that have not been considered by this analysis, as well as the estimated annual volume for such communications. The Department also seeks comment on whether the estimates in this RIA for covered communications (communications subject to the notice and taglines requirement) by health insurance companies or pharmacy benefit managers are reasonable. The Department also seeks comment on the cost burden of, how many entities utilize, how many beneficiaries opt for receipt of, and the expected effectiveness to LEP individuals of, providing non-paper notices or taglines relevant communications related to prescriptions or explanations of benefits. The Department also seeks comment from small, community, and independent providers and pharmacy benefit managers about notices of availability of language assistance services for LEP individuals.

To calculate the costs of the notice and taglines requirement, the Department assumes that the underlying communication to which a nondiscrimination notice and taglines document is attached is a communication that is on average three sheets of paper or less. Combined with the nondiscrimination notice and taglines (which constitute another 1–4 sides of a page, that is, 1 sheet single-sided [213] to 2 sheets of paper double-sided), the total number of sheets of paper that would be transmitted is equivalent to 4–5 sheets of paper or less. The associated costs of the notice and taglines requirement are (1) materials, (2) postage, and (3) labor. Because of the uncertainty around some of the estimates, we report ranges for some values in this analysis.

For materials, the Department assumes that materials (paper and ink) per notice and taglines mailing insert will cost between $0.025 and $0.10. The Department assumes that low materials cost would be $0.025 to print a 1-page notice and taglines on a single sheet of paper single-sided, and the high materials cost of $0.10 to print a 4-page notice and taglines on 2 sheets of paper double sided. The Department seeks comment on its estimate of the length of the materials, including whether the required notice and taglines could have fit on one side of one page only, and how often entities did so in compliance with the requirement, as opposed to using 2–4 sides of a page.

For postage, the Department estimates that the additional weight of the notice and tagline inserts result in a range of no incremental postage costs (low-end) to $0.21 per mailing (high-end). For instance, if an underlying communication is three sheets of paper or less, a covered entity's inclusion of one double-sided page (or shorter) of notice and taglines insert would likely weigh one ounce or less (approximately four letter-sized pages weigh one ounce).[214] Consequently, in this

Department relies on the 2016 RIA assumption that virtually all doctors receive Federal financial assistance and, thus, are subject to the 2016 Final Rule.

[211] Calculated by subtracting total uninsured population (28.1 million as of 2016), *see https://www.census.gov/library/publications/2017/demo/p60-260.html,* from the total U.S. Population in 2016 (323,405,935), *see https://www.census.gov/popclock.*

[212] Source: Pharmaceutical Care Management Association (May 2, 2017).

[213] Although this cost-benefit analysis assumes a lower-bound estimate that a notice of nondiscrimination and 15 taglines may be printed on one side of one sheet of paper, HHS believes that a notice of that length is likely noncompliant with the current Section 1557 rule requirement to be posted ''in conspicuously-visible font size.'' *See also* OCR, Sample Notice Informing Individuals About Nondiscrimination and Accessibility Requirements and Sample Nondiscrimination Statement: Discrimination is Against the Law (printed on two sides of one sheet of paper), *https://www.hhs.gov/sites/default/files/sample-ce-notice-english.pdf.*

[214] *See* ''How Many Sheets of Paper Fit in a 1 Ounce Envelope for Mailing Purposes,'' *https://*

scenario, the notice and taglines insert would not increase the total weight of the mailing beyond the one ounce of postage that a covered entity would already expect to incur. If, however, a covered entity included 2 sheets of paper double-sided containing the nondiscrimination notice and taglines, added to a communication of three sheets of paper or more,, the total weight of the mailing would likely be at least five sheets of paper, and therefore over one ounce. The marginal cost of postage for each ounce is $0.21.[215] The Department seeks comment on whether and how often the required notice and tagline inserts are inserted in larger mailings so as not to implicate the higher end of the estimated incremental postage costs.

For labor, the Department estimates the burden to download, print, and include these notices and taglines with all significant communications for an office clerk (Occupation Code No. 43–9061) with a mean hourly wage of $16.92/hour[216] plus an additional $16.92/hour in fringe benefits, or $33.84/hour for labor costs.[217] Based on experience, entities can manually fold and insert notices and taglines into envelopes at a rate of approximately 360 per hour. Entities that use commercial machines can fold and insert notices and taglines as fast as 5,400 envelopes per hour.[218] The Department uses the median of 2,520 notices and taglines that can be folded and placed into an envelope in an hour. Under these assumptions, the unit labor cost per notice and taglines mailing is $0.01, or $56.2 million per year.

Considering materials, postage and labor, the per-unit cost for the notice and taglines insert ranges from $0.035 at the low-end (for one single-sided sheet of paper of notice and taglines) and $0.32 at the high-end (for two double-sided sheets of paper of notice and taglines) if the Department assumes that the average underlying mailer is 3 sheets of paper. In addition, the Department estimates that some of these costs would be mitigated absent regulatory action, due to transitions to electronic delivery for some communications affected by the rule. The Department estimates electronic delivery would reduce costs of affected communications by approximately 10–20% absent regulatory action, shifting linearly from 10% in the first year to 20% in the fifth year following implementation. Electronic delivery would eliminate postage costs, but may merely shift the costs of paper and printing from the entity providing the communication to the consumer/beneficiary/patient, given that some consumer/beneficiary/patient recipients of electronic communications will print them out and incur costs for the paper and ink associated with doing so. The Department has not included such consumer/beneficiary/patient costs in its estimates, but requests comments on this issue, including on whether there is a higher likelihood of electronic use than assumed here.

The Department averages the low and high-end estimates to determine a primary estimate of annual cost savings, which results in average savings of approximately $0.632 billion per year after adjusting for electronic delivery.

These cost estimates are based on the Department's own research and extensive feedback from covered entities. It invites comment on these estimates, in particular the average numbers of pages sent by covered entities and the costs for publishing and distributing notices and taglines that may be borne by covered entities or types of transactions that it has not identified in this discussion.

With repeal of the Final Rule requirements, the Department assumes that two other regulatory requirements for taglines would also be fully repealed because they depend on, or refer to, the Final Rule for authority for the tagline requirement. The first is the requirement placed on Health Insurance Exchanges (*see* 45 CFR 155.205(c)(2)(iii)(A)), which the Department estimates issue 17.7 million communications per year, primarily through eligibility and enrollment communications. The second is the requirement placed on Qualified Health Plan Issuers (*see* HHS Notice of Benefit and Payment Parameters for 2016; Final Rule, 80 FR 10750, 10788 (Feb. 27, 2015)), whose costs are incorporated into the volume calculations for annual notices of benefits, and explanations of benefits discussed in more detail above. The Department also assumes that health insurance entities would not voluntarily append notices and taglines to routine monthly premium statements absent the Final Rule, but are doing so because of it (or because of a requirement in another regulation which bases its requirement on the Section 1557 Regulation's requirement).

TABLE 2—ANNUAL SAVINGS FROM REPEAL OF REQUIREMENT TO PUBLISH AND MAILING NOTICES AND TAGLINES, BY VOLUME OF TRANSACTIONS PER TYPE PER YEAR BEFORE ACCOUNTING FOR ELECTRONIC DELIVERY

[In millions]

	Count	Estimated low savings ($0.035/unit)	Estimated high savings ($0.32/unit)
Exchange enrollment communications	17.7	$0.62	$5.66
Annual notice of benefits	123	4.32	39.46
Explanations of Benefits—hospital admissions	96	3.37	30.82
Explanations of Benefits—physician's visits	941	32.93	301.05
Medical bills—hospital admissions	11	0.37	3.38
Medical bills—physician visits	99	3.47	31.69
Pharmacy-related notices	2,900	101.50	928.00
Subtotal, not accounting for electronic communications	4,188	146.57	1,340.06

www.reference.com/business-finance/many-sheets-paper-fit-1-ounce-envelope-mailing-purposes-84ba93a60789c2e1.

[215] *See* U.S. Postal Service Postage Rates, *https://www.stamps.com/usps/current-postage-rates/.*

[216] BLS, Occupational Employment and Wages (May 2018), *https://www.bls.gov/oes/2018/may/oes_nat.htm.*

[217] CMS estimates that the labor costs would be a one-time cost of $16,244 for Medicaid managed care and a one-time cost of $9,669 for CHIP managed care. The Department assumes for its calculations that the labor costs for the notice and tagline provisions are not one-time but are ongoing costs associated with the value of office clerks' time printing and including the notices and taglines with significant publications and significant communications.

[218] *See, e.g.,* Pitney Bowes, Relay Mid to High Volume Inserter Systems, *https://www.pitneybowes.com/us/shipping-and-mailing/inserters-sorters-printers/relay-mid-high-volume-inserting-systems.html.*

The average of the low and high end estimates yields a primary estimate of annual savings of approximately $0.632 billion after accounting for electronic delivery. The Department assumes that the nine other CMS regulations or guidelines requiring taglines will continue to be in effect, and the cost of complying with these CMS requirements would need to be subtracted from the total savings that the Section 1557 Regulation's rescission generates for the health care sector as set forth in Table 2. These requirements include (1) Group Health Plans and Health Insurance Issuers requirements; [219] (2) Navigator requirements; [220] (3) Non-Navigator Assistance Personnel requirements; [221] Medicaid requirements; [222] Medicaid Managed Care requirements [223] CHIP requirements; [224] CHIP Managed Care requirements; [225] Hospitals Qualifying for Tax-Exempt Status requirements; [226] and Medicare Advantage (Part C) and Prescription Drug Plans (Part D) requirements.[227] Because the Department's previous rulemaking on these CMS tagline requirements did not attempt to estimate these costs, it invites comment on cost implications here.

Other burdens imposed by the Final Rule's notice and taglines requirements are real, but difficult to quantify.

The vast majority of recipients of taglines do not require translation services. For example, according to Census statistics, as of 2015, over three-quarters (79%) of the U.S. population over age 18 speak only English at home, followed by Spanish (12.5%).[228] Additionally, of persons selecting a language preference when registering for coverage on the HealthCare.gov platform for 2017, 89.93% selected English, followed by 8.36% who selected Spanish.[229] These data points indicate that, for the large majority of people who receive them, the required language tagline mailings provide little to no benefit because they are already proficient English speakers with little need for, and no entitlement under the law to, translation services.

The Department has received many communications from beneficiaries and advocacy groups complaining about the excessive amount of paperwork they receive. These individuals and groups have explained that few people read the notice and taglines and most ignore the last pages of lengthy health documents. These complaints make us concerned that the Section 1557 Regulation has resulted in ''cognitive overload,'' such that individuals experience a diminished ability to process information when inundated with duplicative information and paperwork.

Additionally, documents that contain a significant number of pages that recipients do not value will induce annoyance or frustration due to perceived wasting of time, ignorance of the customers' actual needs or language abilities, waste of economic resources, or insensitivity to environmental concerns. These frustrations, though difficult to quantify are reasonable to expect, given the large volume of health care communications with notice and taglines that most Americans receive. It is also reasonable to expect that repeated mailings of taglines to people who do not want them may negatively impact their likelihood to read truly significant documents from their insurers or doctors, and may negatively impact health outcomes in some cases.

The Department seeks comment on whether and how the Final Rule's notice and taglines requirements impose costs on covered entities and other downstream entities and individuals.

f. Costs Arising From Removal of Notice and Taglines Requirement

Repealing the notice and taglines requirement may impose costs, such as decreasing access to, and utilization of, health care for non-English speakers by reducing their awareness of available translation services. Even so, such an impact is expected to be negligible. Reports from covered entities suggest, anecdotally, that utilization of translation services did not appreciably rise after the Final Rule's imposition of notice and taglines requirements.[230] Furthermore, the Section 1557 requirement added 47 languages to existing language access requirements, which only increased access to 0.4% of the entire U.S. population. This is after broadly defining ''limited English proficiency'' to include those who speak English ''well'' but not ''very well.'' [231] The Department's Office for Civil Rights also produced a list of the top 15 languages in each State; however 26 of the languages on OCR's list are not spoken by even 0.004 percent of the population. In some States, especially those with sparser populations, health insurance issuers must provide tagline services in languages spoken by very few people in the State. For instance, in Wyoming, issuers must provide translation notices in Gujarati and Navajo in every significant communication sent to beneficiaries to account for approximately 40 Gujarati speakers and 39 Navajo speakers; in Montana issuers must provide notices to account for approximately 80 speakers of Pennsylvania Dutch; and in Puerto Rico, issuers must provide taglines notices to account for approximately 22 Korean speakers and 22 French Creole speakers.[232] In addition, the Section 1557 Regulation omitted some languages, like Hungarian, spoken by significant numbers of people in more densely populated States.

Regulations under Section 504 of the Rehabilitation Act require the provision of auxiliary aids and services in health programs or activities that receive Federal financial assistance. 45 CFR 84.52(d). Because the notice requirement under the Final Rule requires frequent mailed notification of the availability of auxiliary aids and

[219] 45 CFR 147.136(e)(2)(iii) and (e)(3), and 147.200(a)(5).

[220] 45 CFR 155.215(c)(4).

[221] 45 CFR 155.215(c)(4).

[222] 42 CFR 435.905(b)(3).

[223] 42 CFR 438.10(d)(2) through (3), (d)(5)(i) and (iii), and (j).

[224] 42 CFR 457.340(a).

[225] 42 CFR 457.1207.

[226] 26 CFR 1.501(r)–4(b)(5)(ii).

[227] Medicare Marketing Guidelines § 30.5.1, *https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html.*

[228] U.S. Census Bureau, *B16007: Age by Language Spoken at Home for the Population 5 Years and Over,* 2011–2015 American Community Survey (American FactFinder) (2017), *https://factfinder.census.gov/bkmk/table/1.0/en/ACS/16_5YR/S1601/0100000US. See also* Kimberly Proctor, Shondelle M. Wilson-Frederick, et *al., The Limited English Proficient Population: Describing Medicare, Medicaid, and Dual Beneficiaries,* 2.1 Health Equity 87 (May 1, 2018), *http://online.liebertpub.com/doi/10.1089/heq.2017.0036* (identifying Spanish as the language of the largest majority of limited English proficient speakers in Medicaid and Medicare, according to the 2014 American Community Survey).

[229] CMS, *Race, Ethnicity, and Language Preference in the Health Insurance Marketplaces 2017 Open Enrollment Period* (April 2017), *https://www.cms.gov/About-CMS/Agency-Information/OMH/Downloads/Data-Highlight-Race-Ethnicity-and-Language-Preference-Marketplace.pdf.* States that that do not use the HealthCare.gov platform, such as California and New York, were not included in this report.

[230] Source: Aetna (May 1, 2017).

[231] *See* HHS OCR, Frequently Asked Questions to Accompany the Estimates of at Least the Top 15 Languages Spoken by Individuals with Limited English Proficiency under Section 1557 of the Affordable Care Act, Question 2 (Sept. 1, 2016), *https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/top15-languages/index.html* (using 2013 year estimates). *See* U.S. Census Bureau, Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over, *https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_5YR_B16001&prodType=table* (2016 year estimates).

[232] OCR, Resource for Entities Covered by Section 1557 of the Affordable Care Act, Estimates of at Least the Top 15 Languages Spoken by Individuals with Limited English Proficiency for the 50 States, the District of Columbia, and the U.S. Territories (Aug. 2016), *https://www.hhs.gov/sites/default/files/resources-for-covered-entities-top-15-languages-list.pdf.*

services, repealing the notice of nondiscrimination requirement may result in additional societal costs, such as decreased utilization of auxiliary aids and services by individuals with disabilities due to their reduced awareness of such services. This impact may be limited, however, because the Section 504 regulations already require recipients of Federal financial assistance employing fifteen or more persons provide notice to participants, beneficiaries, applications, employees, and other interested persons of the availability of such aids and services. 45 CFR 85.12 and 84.22(f).

Additionally, an unknown number of persons are likely not aware of their right to file complaints with the Department's Office for Civil Rights and some unknown subset of this population may suffer remediable grievances, but will not complain to OCR absent notices informing them of the process.

g. Cost Savings From Changes to Language Access Plan Provisions

Although the Final Rule did not require covered entities to develop a language access plan, the Rule stated that the development and implementation of a language access plan is a factor the Director ''shall'' take into account when evaluating whether an entity is in compliance with Section 1557. 45 CFR 92.201(b)(2). Therefore, the Department anticipated that 50% of covered entities would develop and implement a language access plan following issuance of the Final Rule. 81 FR 31454.

OCR estimated that the burden for developing a language access plan is approximately three hours of medical and health service manager staff time in the first year, and an average of one hour of medical and health service manager staff time per year to update the plan in subsequent years. The value of an hour of time for people in this occupation category, after adjusting for overhead and benefits, is estimated to be $109.36 based on Bureau of Labor Statistics (BLS) data for 2018.[233] The Department estimated that approximately 269,141 entities could potentially make changes and develop language access plans, as part of the requirement to take reasonable steps to provide meaningful communication with LEP individuals (calculated by reducing the total number of entities (275,002) by the number of hospitals and nursing care facilities that were already subject to language access plan requirements under Medicare Part A (5,861). The Department further assumed that only 50% of the identified entities would actually make changes to implement a language access plan. These assumptions imply that the total cost of developing language access plans will be approximately $44.1 million (269,141 entities multiplied by 50% of entities multiplied by 3 hours per entity multiplied by $109.36 per hour) in the first year and approximately $14.7 million (269,141 entities multiplied by 50% of entities multiplied by 1 hour per entity multiplied by $109.36 per hour) per year in subsequent years. In making these calculations, the Department assumes sunk costs cannot be recovered by this rule, and therefore that initial language access plan development costs described above cannot be recovered.

By repealing the provision of the Final Rule regarding the Language Access Plans, the Department estimates an annual savings are $14.7 million.

h. Cost Savings Attributed to Covered Entities' Handling of Certain Grievances

The proposed rule proposes to repeal the requirement for each covered entity with 15 or more employees to have a compliance coordinator and a written grievance procedure to handle complaints alleging violations of Section 1557. The Department estimates that, under the proposed rule, covered entities would no longer have to incur certain labor costs associated with processing grievances related to sex discrimination complaints as they relate to gender identity and sex-stereotyping as defined under the Final Rule because such definitions would be repealed and no longer binding under the proposed rule. This proposed repeal would not, however, affect the independent obligations of Section 1557 covered entities to comply with Federal regulations under Section 504 and Title IX to have written processes in place to handle grievances alleging certain disability and sex discrimination claims, respectively.[234]

For the sake of consistency and convenience, the Department uses the methodology from the 2016 Final Rule as a foundation for estimating the projected savings of this proposed rule provision.

The 2016 Final Rule estimated that, in years three through five of the Final Rule's implementation, covered entities with 15 or more employees would incur $85.5 million in costs annually to handle Section 1557 grievances. 81 FR 31458. This estimate assumed that covered entities would experience an average increase in grievances equal to OCR's projected long-term increase in caseload of about 1%. 81 FR 31376. The 2016 Final Rule monetized this 1% increase in caseload as a labor cost equivalent to 1% of the annual median wage for a medical and health service manager (occupation code 11–9111). 81 FR 31376. The Department continues to assume that OCR's increase in caseload attributed to the 2016 Final Rule reasonably informs the increase in grievance processing that covered entities experience.

Based on OCR's tracking of Section 1557 complaints received from promulgation of the Final Rule (May 18, 2016) until present, OCR predicts that its long-term caseload would have increased 5% rather than 1% as originally predicted. Further, OCR believes roughly 60% of this increase (which equals 3% of the overall increase) would have been attributable to discrimination claims based on the Final Rule's definition of sex discrimination with respect to gender identity and sex stereotyping. The Department uses the phrase ''would have'' with regard to OCR's caseload because, as described above, the Department has been enjoined by a Federal court from enforcing claims based on the Final Rule's novel definition of sex discrimination.

The Final Rule asserted that private parties have the right to challenge a violation of Section 1557 or the Final Rule in Federal court, independent of OCR enforcement or involvement. 45 CFR 92.302(d). In the preamble to the Final Rule, the Department estimated that the ability for private parties to sue under the Final Rule would result in covered entities bearing increased compliance costs. 81 FR 31395 (''the presence of a coordinator and grievance procedure enhances the covered entity's accountability and helps bring concerns to prompt resolution, oftentimes prior to an individual bringing a private right of action.''). The injunction does not apply to suits filed by private parties.

Although the Supreme Court has recognized a private right of action for some civil rights statutes enforced by the Department, with the proposed rule change, the Department would no longer assert that a private right of action exists for parties to sue covered entities for any and all alleged violations of the proposed rule. The Department would no longer take a

[233] BLS, Occupational Employment and Wages (May 2018), *https://www.bls.gov/oes/2018/may/oes_nat.htm.*

[234] *See, e.g.,* 45 CFR 84.7(a) (HHS regulations implementing Section 504) (requiring a written process in place for handling grievances alleging disability discrimination), 86.8(a) (HHS regulations implementing Title IX) (requiring a written process in place for handling grievances alleging sex discrimination).

position on that issue in its regulations, leaving the matter as primarily one for the courts to decide. Additionally, by virtue of rescinding the definitions from the regulatory text, the proposed rule would remove the expansive inclusion of gender identity and sex stereotyping in the definition of sex discrimination as substantive grounds for a private right of action alleging such violations by covered entities. As a result, a certain number of covered entities that are currently incurring grievance-related costs related to these claims may no longer incur such costs under the proposed rule.

For reasons set forth above, the Department estimates that covered entities have experienced a 3% increase in grievance claims over the long term concerning gender identity and sex stereotyping claims as set forth under the Final Rule and that, under the proposed rule, they would no longer have to process such claims under the grievance procedures required under the Final Rule. However, due to voluntary policies or more stringent State requirements, the Department expects that 50% of covered entities would likely continue to accept and handle grievances alleging discrimination based on gender identity and sex stereotyping as set forth under the Final Rule, notwithstanding that this proposed rule would eliminate those provisions. Consequently, the Department estimates that only approximately half of the 3% increase in caseload, or about 1.5%, will be realized as annual savings by covered entities. The annual savings in labor attributed to a 1.5% decrease in grievance caseload is $123.4 million. This value represents 1.5% of the annual median wage of a medical and health service manager ($199,472 fully loaded) multiplied by the 41,250 covered entities with 15 or more employees.

i. Additional Costs for Training and Familiarization Under Proposed Rule

To comply with the proposed rule, the Department anticipates that some covered entities may incur costs to re-train employees in order realize potential longer term costs savings from the deregulatory aspects of this proposed rule change, for example, provisions eliminating the need for certain grievance procedures described in the preceding section. The Department assumes that employers are most likely to train employees who interact with the public, and will therefore likely train between 40% and 60% of their employees, as the percentage of employees that interact with patients and the public varies by covered entity. For purposes of the analysis, the Department assumes that 50% of the covered entity's staff will receive one-time training on the requirements of the regulation. It uses the 50% estimate as a proxy, given the lack of certain information as described below. For the purposes of the analysis, the Department does not distinguish between employees whom covered entities will train and those who obtain training independently of a covered entity.

(1) Number of Covered Entities That May Train Workers

The Final Rule estimated that 275,002 covered entities would train their employees on the Rule's requirements in general (including training regarding language access provisions), and used that 275,002 figure as the basis for calculating costs to covered entities arising specifically out of the Rule's prohibition on discrimination on the basis of sex. *See* 81 FR at 31450. HHS assumes, for purposes of this analysis, that the Final Rule's estimation was an accurate and reasonable basis for calculating costs arising out of the Final Rule's prohibition of sex discrimination. However, HHS seeks comment on the accuracy of these assumptions and calculations.

TABLE 3—NUMBER OF HEALTH CARE ENTITY FIRMS COVERED BY RULE

NAIC	Entity type	Number of firms
62142	Outpatient mental health and substance abuse centers	4,987
621491	HMO medical centers	104
621492	Kidney dialysis centers	492
621493	Freestanding ambulatory surgical and emergency centers	4,121
621498	All other outpatient care centers	5,399
6215	Medical and diagnostic laboratories	7,958
6216	Home health care services	21,668
6219	All other ambulatory health care services	6,956
62321	Residential intellectual and developmental disability facilities	6,225
6221	General medical and surgical hospitals	2,904
6222	Psychiatric and substance abuse hospitals	411
6223	Specialty (except psychiatric and substance abuse) hospitals	373
6231	Nursing care facilities (skilled nursing facilities)	8,623
44611	Pharmacies and drug stores	18,852
6211	Offices of physicians	185,649
524114	Insurance Issuers	180
	Navigator grantees	100
Total Entities		275,002

(2) Number of Individuals Who Will Receive Training

The first category of health care staff that may receive training comprises health diagnosing and treating practitioners. This category includes physicians, dentists, optometrists, physician assistants, occupational, physical, speech and other therapists, audiologists, pharmacists, registered nurses, and nurse practitioners. The BLS occupational code for this grouping is 29–1000 and the 2018 reported count for this occupational group is approximately 5.4 million with average loaded wages of $98.04 per hour.

The second category of health care staff that the Department assumes will receive training comprises degreed technical staff (Occupation code 29–2000) and accounts for 3.1 million workers with average loaded wages of $46.52 per hour. Technicians work in almost every area of health care: X-ray to physical, speech, psychiatric,

dietetic, laboratory, nursing, and records technicians, to name but a few areas.

The third category of health care staff that the Department assumes will receive training comprises non-degreed medical assistants (Occupation code 31–0000), and includes psychiatric and home health aides, orderlies, dental assistants, and phlebotomists. Health care support staffs (technical assistants) operate in the same medical disciplines as technicians, but often lack professional degrees or certificates. The Department refers to this workforce as non-degreed compared to medical technicians who generally have degrees or certificates. There are approximately 4.1 million individuals employed in these occupations with average loaded wages of $31.14 per hour.

The fourth category of health care staff that the Department assumes will receive training is health care managers (approximately 0.4 million based on BLS data for occupation code 11–9111) with average loaded wages of $109.36 per hour. Because the Department assesses costs of familiarization with the regulation for one manager at each entity, it assumes that those managers will have already become familiar with the regulation and will not need additional training.

The fifth category of health care staff that the Department assumes will receive training is office and administrative assistants—Office and Administrative Support Occupation (Occupation code 43–0000). These workers are often the first staff patients encounter in a health facility and, because of this, covered entities might find it important that staff, such as receptionists and assistants, receive training on the regulatory requirements. Approximately 2.8 million individuals were employed in these occupations in health facilities in 2018 with average loaded wages of $36.50 per hour. The Department assumes that outreach workers are included in the five categories listed above, especially in the manager category.

(3) Total Cost of Training

The Final Rule estimated that covered entities would incur $420.7 million in undiscounted costs to train employees on the requirements of the Rule, distributed roughly evenly over the first two years after the Final Rule's effective date. 81 FR at 31458. This conclusion presumed covered entities were already periodically training employees on their obligations under Section 1557, but that the Final Rule's new sex discrimination requirements would induce covered entities to engage in additional ''comprehensive training.'' 81 FR 31447.

For the purposes of this regulatory impact analysis, the Department assumes covered entities would face similar costs to retrain the workforce on the proposed rule's requirements.[235] However, because some covered entities will avoid incurring training expenses when they are not required to (and they will not be under the proposed rule), and because several States with large populations already prohibit gender identity discrimination in health care, the Department further assumes that only 50% of covered entities would modify their policies and procedures to reflect the changes in the proposed rule. The Department further assumes that the same percentage, 50%, of covered entities, or 137,501, would train their employees to reflect the changes in the proposed rule. As in the Final Rule, the Department assumes that approximately half of the employees at these covered entities will engage in an average of an additional hour of training, and that this will occur in the first year of implementing this rule. These assumptions imply total training costs of $235.9 million. The Final Rule's calculations of training costs did not anticipate any ongoing training costs after year one—either in the form of annual refresher training for returning employees or training for new employees. The Department now believes that covered entities likely incur such costs, but assumes that equal costs would also be incurred under the proposed rule. Therefore, HHS has excluded ongoing training costs from the calculation of the baseline and from the calculation of the projected costs of the proposed rule, because such training has a net zero effect on projected costs. HHS solicits comment on the foregoing assumptions and calculations of the costs of training under the Final Rule and the proposed rule.

j. Additional Costs for Revising Policies and Procedures

As discussed above, the Department anticipates that 50% of covered entities, or approximately 137,501 entities, would choose to revise their policies or procedures to reflect this proposed rule's clarification of the application of Section 1557 (if finalized as proposed), while other covered entities may retain their policies to ensure compliance with State or local laws. The Department assumes that it would take, on average, three to five hours for a provider to modify policies and procedures concerning the Section 1557 proposed rule. The Department selects four hours, or the midpoint of this range, for the analysis. HHS further assumes that an average of three of the hours would be spent by a mid-level manager equivalent to a front-line supervisor (Occupation code 43–1011), at a cost of $57.06 per hour[236] after adjusting for overhead and benefits, and an average of one hour would be spent by executive staff equivalent to a general and operations manager (Occupation code 11–1021), at a cost of $119.12 per hour[237] after adjusting for overhead and benefits. HHS solicits comment on the accuracy of these assumptions. The total cost for the estimated 137,501 covered entities to make their policies and procedures consistent with the proposed rule's clarification of discrimination on the basis of sex is estimated to be approximately $39.9 million following implementation of this rule.

The above estimates of time and number of entities that would choose to revise their policies under the regulation are approximate estimates based on general BLS data. Due to the wide range of types and sizes of covered entities, from complex multi-divisional hospitals to small neighborhood clinics and physician offices, the above estimates of time and number of entities that would choose to revise their policies under the regulation is difficult to calculate.

k. Other Costs Due to Reversion to Previous Practices

The Final Rule may have prompted covered health care providers to institute operational changes beyond their nondiscrimination policies and procedures. HHS solicits comment on providers' experience with the efficiency or cost-effectiveness of any such operational changes made in response to the Final Rule. To the extent that such changes required more than a *de minimis* cost to implement, providers that choose to revert to previous practices may incur more than a *de minimis* cost in making that reversion. However, as such changes would likely be voluntary, HHS assumes that providers would make such changes because they determined them to be cost-effective. HHS solicits comment on the accuracy of this assumption.

[235] Training costs in the Final Rule relied upon 2014 wages. *See, e.g.,* 81 FR 31451 (estimating the median hourly wage for occupation code 29–1000 at $36.26, unloaded, at *https://fxsp0;www.bls.gov/oes/2014/may/oes_nat.htm#29-0000https://www.bls.gov/oes/tables.htm* (OES Data: May 2014). *https://www.bls.gov/oes/2014/may/oes_nat.htm#29-0000https://www.bls.gov/oes/2014/may/oes_nat.htm#29-0000*).

[236] BLS, Occupational Employment and Wages, May 2018, *https://www.bls.gov/oes/2018/may/oes_nat.htm.*

[237] *Id.*

l. Other Benefits or Costs

The Final Rule's regulatory impact analysis did not include an economic cost-benefit analysis of the impact of the regulation on health insurance benefit design. The Department lacks sufficient data on how much burden the Final Rule has placed on the development and operation of insurance benefits policies, and, thus, is unable to fully assess the benefit of removing this requirement. The Final Rule was intended to impact benefit design by applying Section 1557's nondiscrimination requirements to denial, cancellation, limitation, refusal to issue, refusal to renew, or categorical exclusion of certain benefits related to gender identity. A Federal court, however, enjoined application of the Final Rule in this manner on a nationwide basis immediately before the start of the first plan year after the Final Rule came into effect, thus, OCR has not enforced the Final Rule's benefit design provisions as they relate to coverage of gender identity-related treatments.

The Department does not know what effect the Final Rule, in conjunction with the court injunction, has had on benefit design with respect to coverage of gender identity-related treatments. It, therefore, does not have enough information to estimate effects from the proposal to repeal of the Final Rule's benefit design requirements. The Department believes, however, that because a Federal court enjoined enforcement of the Section 1557 Regulation before the start of the first plan year in which the current rule would have applied, that beneficiaries of the expanded gender identity provisions could not have developed a reliance interest on the enjoined parts of the rule. The Department seeks comments on the effective date of repeal of the gender identity benefit design provisions.

Additionally, aside from benefit design questions, the Department seeks comment and documentation of cases where, despite the preliminary injunction barring OCR from enforcing the provisions, persons would not have received treatments or procedures related to gender identity or termination of pregnancy, but for the Final Regulation's gender identity and termination of pregnancy provisions.

The Department does not estimate any cost savings related to decreased OCR enforcement of gender identity related claims under the proposed rule because the injunction has generally prevented OCR enforcement of such claims to date and the proposed rule would thus merely reflect the *status quo* and not result in additional cost savings related to OCR enforcement expenditures.

Continued enforcement of Section 1557 includes vindication of legal rights, the benefits of which are difficult to quantify. The proposed rule would continue to prohibit covered entities from discriminating against patients and beneficiaries on the basis of their race, color, national origin, disability, age, or sex. OCR will continue to vigorously enforce civil rights in order to help guarantee more access to health care and concomitant improved health outcomes—but these benefits are difficult to estimate given that many of the prohibitions encompassed by the proposed rule, as with the Final Rule, have been in place at the Federal level for many years or have been otherwise required by State or local law. We welcome comments on these issues.

7. Impact on State, Local, and Tribal Entities Under Executive Orders 12866, 13132, and 13175

a. State and Local Governments

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent Final Rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. Executive Order 13132, 64 FR 43255 (Aug. 4, 1999). The Department does not believe that this rulemaking would (1) impose substantial direct requirements costs on State or local governments; (2) preempt State law; or (3) otherwise have federalism implications. Section 1557 itself provides that it shall not be construed ''to supersede State laws that provide additional protections against discrimination on any basis described in subsection (a) [of Section 1557].'' 42 U.S.C. 18116(b).

The proposed rule maintains the full force of Federal civil rights laws' protections against discrimination, but does not attempt to impose a ceiling on how those protections may be observed by States. State and local jurisdictions would continue to have the flexibility to impose additional civil rights protections.

The Department believes that there would be reduced costs to State and local entities, by repealing wasteful Federal mandates and giving States more flexibility to address the needs of LEP individuals or other regional-specific issues.

The Department believes that the proposed change to its Title IX regulations would not have a substantial direct effect on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on tribal self-government or sovereignty. The proposed rule would not subject Title IX funding recipients to new obligations, but rather would relieve potential burden on the States or tribes that could have resulted from the prior interpretation of Title IX by HHS. The proposed rule would allow States and tribes to adopt or continue to provide nondiscrimination protections on the basis of sexual orientation and gender identity in State, local, and tribal law. Therefore, the Department has determined that the proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement under Executive Order 13132, and that the rule would not implicate the requirements of Executive Orders 12866 and 13175 with respect to tribes.

b. Tribal Governments

Executive Order 12866 directs that significant regulatory actions avoid undue interference with State, local, or tribal governments, in the exercise of their governmental functions. Executive Order 12866 at section 6(a)(3)(B).[238] Executive Order 13175 further directs that Agencies respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments. Executive Order 13175 at section 2(a). The Department does not believe that the proposed rule would implicate the requirements of Executive Orders 12866 and 13175 with respect to tribal sovereignty, and solicits comments from tribal representatives and tribal members on this conclusion and all other provisions of this proposed rule as they relate to tribes.

8. Avoidance of Inconsistent, Incompatible, or Duplicative Regulations

Executive Order 12866 requires the Department to avoid issuing regulations that are inconsistent, incompatible, or duplicative with other regulations that it has issued or that have been issued by other Federal agencies. Executive Order 12866 at section 1(b)(10). Section 1557 itself requires avoidance of duplication by providing that the enforcement

[238] As stated in the preceding section, the proposed rule does not have federalism implications.

mechanism under specifically identified civil rights laws ''shall apply for purposes of violations'' of Section 1557. 42 U.S.C. 18116(a).[239] The preamble to the Final Rule repeatedly stated that, with the exception of issues concerning notices, sex discrimination, and language access plans, it was merely applying civil rights protections that were already applicable and familiar to covered entities. *See* 81 FR 31446. (''It is important to recognize that this final rule, except in the area of sex discrimination, applies pre-existing requirements in Federal civil rights laws to various entities, the great majority of which have been covered by these requirements for years.''); 81 FR 31464 (''For the most part, because this regulation is consistent with existing standards applicable to the covered entities, the new burdens created by its issuance are minimal.'').

With regard to the current Section 1557 Regulation's notice and taglines requirement, covered entities are already subject to dozens of regulations concerning multi-language taglines or notices concerning an individual's right to have documents translated. For example, CMS imposes tagline requirements on health insurance marketplaces, qualified health plan issuers, group health plans and health insurance issuers, navigators, non-navigator assistance personnel, Medicaid, Medicaid managed care, Children's Health Insurance Program, Medicare Advantage, and Medicare Part D.[240] Furthermore, a Department of Treasury regulation imposed tagline requirements for hospital organizations to qualify for tax-exempt status.[241] Additionally, in 2003, the Department issued guidance under Title VI of the Civil Rights Act of 1964, setting forth a flexible four-factor framework to assess the necessity and reasonableness for providing written translation for LEP individuals.[242] Finally, the PPACA itself provides that each summary of benefits and coverage provided by issuers—perhaps the single most important health insurance-related document a person receives—must be ''presented in a culturally and linguistically appropriate manner.'' 42 U.S.C. 300gg–15(b)(2).

Substantially replacing many provisions of the Final Rule as proposed, including removing the notice and taglines requirements, would eliminate significant redundancies identified above, while maintaining vigorous enforcement of existing Federal civil rights statutes.

B. Executive Order 13771 on Reducing and Controlling Regulatory Costs

This proposed rule is expected to be an E.O. 13771 deregulatory action. The Department estimates that this proposed rule would generate $532 million in net annualized savings at a 7% discount rate (discounted relative to year 2016, over a perpetual time horizon, in 2016 dollars).

Furthermore, Executive Order 13765 states that ''the Secretary of Health and Human Services (Secretary) and the heads of all other executive departments and agencies (agencies) with authorities and responsibilities under the [PPACA] shall exercise all authority and discretion available to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [PPACA] that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, [or] purchasers of health insurance.'' Executive Order 13765, 82 FR 8351, 8351 (Jan. 24, 2017). In implementing Section 1557 of the PPACA, the Section 1557 Regulation imposed significant regulatory burdens on covered entities, including States, healthcare providers, and health insurers, without corresponding benefits for patients or beneficiaries. By proposing to substantially replace the Final Rule with a regulation that requires compliance with pre-existing civil rights laws, the Department is acting in accordance with Executive Order 13765 in exercising its authority and discretion to address the fiscal burdens on States, and the regulatory burdens imposed on individuals, families, healthcare providers, health insurers, patients, and recipients of healthcare service. The proposed rule would particularly reduce the economic burden imposed on health care providers and insurers required to provide taglines under the Final Rule. Decreasing the burden on these providers and insurers will allow them to pass along some of the cost savings to individuals, families, patients, and beneficiaries of insurance to whom they provide services or coverage. Additionally, eliminating the taglines requirement will alleviate burdens on patients and insurance beneficiaries that neither need nor want to receive repeated tagline mailings.

C. Congressional Review Act

The Congressional Review Act (CRA) defines a ''major rule'' as ''any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for

[239] For the applicable enforcement mechanisms, *see* 45 CFR parts 80 and 81 (Title VI), 85 (Section 504), 86 (Title IX), 90 and 91 (Age Act).

[240] 45 CFR 147.136(e)(2)(iii) and (e)(3) and 147.200(a)(5) (requiring group health plans and QHP issuers to post taglines in languages in which 10% of individuals with LEP county-wide are exclusively literate on internal claims and appeals notices, and requiring QHP issuers to post on its Summary of Benefits and Coverage), 155.215(c)(4) (requiring Navigators and non-Navigator personnel in States with Marketplaces operated by HHS to ''[p]rovide oral and written notice to consumers with LEP, in their preferred language, informing them of their right to receive language assistance services and how to obtain them''); 42 CFR 435.905(b)(3) (Medicaid regulations requiring individuals to be ''informed of the availability of language services . . . and how to access . . . [them] through providing taglines in non-English languages indicating the availability of language services''); 438.10(c)(5)(i) through (ii) (Medicaid managed care regulations requiring taglines until July 1, 2017); 438.10(d)(2) through (3), (d)(5)(i), (d)(5)(iii) and (d)(5)(j) (Medicaid managed care regulations requiring taglines on ''all written materials for potential enrollees'' in the prevalent non-English languages in the State and requiring notification that ''oral interpretation is available for any language and written translation is available in prevalent languages'' during the rating period for contracts with managed care entities beginning on or after July 1, 2017), 457.340(a) (applying certain Medicaid requirements to the Children's Health Insurance Program, including § 435.905(b)(3), which requires individuals to be ''informed of the availability of language services . . . and how to access . . . [them] through providing taglines in non–English languages indicating the availability of language services''), 457.1207 (applying certain Medicaid managed care requirements to Children's Health Insurance Program managed care, including § 438.10(c)(5)(i)–(ii) until the State fiscal year beginning on or after July, 1, 2018), § 438.10(d)(2)–(3), (d)(5)(i), (iii), (j) (applying certain Medicaid managed care requirements to Children's Health Insurance Program managed care, in the State fiscal year beginning on or after July, 1, 2018); CMS, 2017 Medicare Marketing Guidelines, § 30.5.1, § 100.2.2, § 8, § 80–8 (Jun. 10, 2016), *https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/Downloads/2017MedicareMarketingGuidelines2.pdf* (providing a CMS Multi-Language Insert'' for certain Medicare Advantage Plan's and Medicare Part D Plan Sponsors' marketing materials meeting the percentage translation threshold in §§ 422.2264(e) and 423.2264(e) of Title 42 of the CFR). As discussed in the RIA section of this NPRM, we presume 45 CFR 155.205(c)(2)(iii)(A) (requiring Marketplaces and QHP issuers to post taglines on their websites and documents ''critical for obtaining health insurance coverage or access to health care services through a QHP'') and other provisions that depend or refer to 45 CFR part 92 for their tagline requirements would no longer apply if this proposed rule is finalized.

[241] *See* 79 FR 78954 (Dec. 31, 2014) (finalizing rule requiring the plain language summary of the financial assistance policy for hospital organizations to qualify as tax exempt, to indicate, if applicable, whether the summary, the financial assistance policy, and the application for such assistance are available in other languages).

[242] Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 FR 47315 (Aug. 8, 2003) (HHS LEP Guidance).

consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.'' 5 U.S.C. 804(2). Based on the analysis of this proposed rule under Executive Order 12866, this proposed rule, if finalized as proposed, is expected to be a major rule for purposes of the Congressional Review Act because it proposes cost savings of over $100 million. The Department will comply with the CRA's requirements to inform Congress if applicable.

D. Unfunded Mandates Reform Act

The proposed rule is not subject to the Unfunded Mandates Reform Act because it falls under an exception for regulations that establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. 2 U.S.C. 1503(2).

E. Regulatory Flexibility Act and Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking

The Regulatory Flexibility Act (RFA) requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Public Law 96–354, 94 Stat. 1164 (Sept. 19, 1980) (codified at 5 U.S.C. 601 through 612). The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis, unless the agency expects that the proposed rule will not have a significant economic impact on a substantial number of small entities, provides a factual basis for this determination, and proposes to certify the statement. 5 U.S.C. 603(a), 605(b). If an agency must provide an initial regulatory flexibility analysis, this analysis must address the consideration of regulatory options that would minimize the economic impact of the proposed rule on small entities. 5 U.S.C. 603(c).

For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. HHS considers a rule to have a significant impact on a substantial number of small entities if it has at least a three percent impact of revenue on at least five percent of small entities.

Based on its examination, the Department has preliminarily concluded that this proposed rule does not have a significant economic impact on a substantial number of small entities. The preamble to the Final Rule discussed the character of small entities impacted by the Final Rule in detail. 81 FR 31463–31464. Although the proposed rule would affect numerous small entities, it does not create new or expanded requirements, and, for all the reasons stated in the RIA, it will be reducing economic burdens on such entities overall. The proposed changes to Title IX would not impose any new substantive obligations on Federal funding recipients and, in fact, would provide regulatory clarity and relief for any small entities previously subject to several of the policies and requirements imposed by the Department.

To the extent the proposed rule imposes economic costs, it is limited to entities' voluntary choices to revise their policies and procedures and conduct training, and we believe these costs are well below those required to have a significant impact on a substantial number of small entities. In addition, the majority of the costs associated with this proposed rule are proportional to the size of entities, meaning that even the smallest of the affected entities are unlikely to face a substantial impact.

For these reasons, the Secretary certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking reinforces the requirements of the RFA and requires the Department to notify the Chief Counsel for Advocacy of the Small Business Administration if the proposed rule may have a significant economic impact on a substantial number of small entities under the RFA. Executive Order 13272, 67 FR 53461 (Aug. 16, 2002). Because the economic impact of the proposed rule is not significant under the RFA, the Department is not subject to Executive Order 13272's notification requirement.

F. Executive Order 12250 on Leadership and Coordination of Nondiscrimination Laws

Pursuant to Executive Order 12250, the Attorney General has the responsibility to ''coordinate the implementation and enforcement by Executive agencies of . . . Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*)'' Executive Order 12250 at sec. 1–2(b), 45 FR 72995 (Nov. 2, 1980). Furthermore, Executive Order 12250 requires the Attorney General to ''review . . . proposed rules . . . of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.'' *Id.* at sec. 1–202. The proposed rule has been reviewed and approved by the Attorney General pursuant to Executive Order 12250.

G. Paperwork Reduction Act

The Department has determined that the proposed rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* If the rule is finalized as proposed, OCR will update and revise its burden analysis by removing the burden associated with the posting of a nondiscrimination notice and taglines, development and implementation of a language access plan, and designation of a compliance coordinator and adoption of grievance procedures for covered entities with 15 or more employees. OCR is seeking Paperwork Reduction Act approval for this reporting requirement via an update to HHS Form 690 (Consolidated Civil Rights Assurance Form) [243] separate from this rulemaking.

VII. Effective Date

Because this proposed rule would relieve significant regulatory burdens, particularly the tagline requirements, the Department proposes that the effective date be 60 days after publication of the Final Rule.

VIII. Request for Comment

The Department seeks comment on all issues raised by the proposed regulation. Specifically, in addition to issues on which it has already requested comments, above, the Department requests comment on:

- The financial impact of the proposed rule on the health care sector, with any detailed supporting information, facts, surveys, audits, or reports;
- Whether, and if so how, the proposed rule addresses clarity and confusion over compliance requirements and rights of protected classes;
- Whether the Final Rule's grievance procedures have achieved any significant mitigation of the costs of litigation over the new requirements created by the Final Rule;
- Whether, and if so, how new and developing technologies can assist covered entities with their compliance obligations and enhance access to quality health care;

[243] *See* HHS OCR, Assurance of Compliance Portal, *https://ocrportal.hhs.gov/ocr/aoc/instruction.jsf.*

• The costs incurred for design of health benefits, with any detailed information facts, surveys, audits, or reports;

• The costs to provide nondiscrimination notices and taglines, specifically including the marginal labor, material, postage, and depreciation costs for printing and mailing additional sides and sheets of paper (including extra postage), the volume of such notices or mailings, and the impact of such notices or mailings on the utilization of language access services with any detailed supporting information, facts, surveys, audits, or reports;

• The prevalence of health care entities that operate and beneficiaries that reside in more than one State, with any detailed supporting information, facts, surveys, audits, or reports;

• The amount of marketing, enrollment, and benefits communications delivered or mailed per year, with any detailed supporting information, facts, surveys, audits, or reports;

• Unaddressed discrimination on the basis of race, color, national, and origin, sex, disability, and age as applied to State and Federally-facilitated Exchanges, with any detailed supporting information, facts, surveys, audits, or reports;

• Whether covered entities seek guidance on best practices for compliance with Section 1557, such as for civil rights assurances signed by recipients of Federal financial assistance, and notices of civil rights posted in areas such as employee break rooms;

• The costs of coming into compliance or remaining in compliance with a Federal prohibition of discrimination on the basis of gender identity or sexual orientation under Title IX, and with any detailed supporting information, facts, surveys, audits, or reports;

• Whether the proposed LEP provisions are practical, effective, fiscally responsible, reasonable, responsive to the particular circumstances relevant to health care programs or activities, and capable of being readily implemented;

• Whether HHS's Title VI regulations at 45 CFR part 80 should be amended to address the *Lau* v. *Nichols* precedent applicable to LEP individuals under any program or activity receiving Federal financial assistance from HHS;

• Whether HHS's Section 504 regulations at 45 CFR part 85 should be amended to address effective communication, accessibility standards for buildings of facilities, accessibility of electronic information technology, and the requirement to make reasonable modifications for otherwise qualified individuals with disabilities under any program or activity receiving Federal financial assistance from HHS; and

• Whether the proposed provisions on language assistance services adequately balance an LEP individual's meaningful access to effectively participate in the covered health program or activity with the resources available and costs to the covered entity.

List of Subjects

42 CFR Part 438

Civil rights, Discrimination, Grant programs—health, Individuals with disabilities, Medicaid, National origin, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

42 CFR Part 440

Civil rights, Discrimination, Grant programs—health, Individuals with disabilities, Medicaid, National origin, Nondiscrimination, Sex discrimination.

42 CFR Part 460

Age discrimination, Aged, Civil rights, Discrimination, Health Incorporation by reference, Individuals with disabilities, Medicare, Medicaid, National origin, Nondiscrimination, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

45 CFR Part 86

Civil rights, Colleges and universities, Employment, Administrative practice and procedure, Buildings and facilities, Education of individuals with disabilities, Education, Educational facilities, Educational research, Educational study programs, Equal educational opportunity, Equal employment opportunity, Graduate fellowship program, Grant programs—education, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements, Sex discrimination, State agreement program, Student aid, Women.

45 CFR Part 92

Administrative practice and procedure, Age discrimination, Civil rights, Discrimination, Elderly, Health care, Health facilities, Health insurance, Health programs or activities, Individuals with disabilities, National origin, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination.

45 CFR Part 147

Age discrimination, Civil rights, Discrimination, Health care, Health insurance, Individuals with disabilities, National origin, Nondiscrimination, Reporting and recordkeeping requirements, Sex discrimination, State regulation of health insurance.

45 CFR Part 155

Actuarial value, Administration and calculation of advance payments of the premium tax credit, Administrative practice and procedure, Advance payments of premium tax credit, Age discrimination, Civil rights, Cost-sharing reductions, Discrimination, Health care access, Health insurance, Individuals with disabilities, National origin, Nondiscrimination, Plan variations, Reporting and recordkeeping requirements, Sex discrimination, State and local governments.

45 CFR Part 156

Administrative appeals, Administrative practice and procedure, Administration and calculation of advance payments of premium tax credit, Advertising, Advisory Committees, Age discrimination, Brokers, Civil rights, Conflict of interest, Consumer protection, Cost-sharing reductions, Discrimination, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, National origin, Nondiscrimination, Payment and collections reports, Public assistance programs, Reporting and recordkeeping requirements, Sex discrimination, State and local governments, Sunshine Act, Technical assistance, Women, Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 42 CFR parts 438, 440, and 460 and 45 CFR parts 86, 92, 147, 155, and 156 as follows:

Title 42—Public Health

PART 438—MANAGED CARE

■ 1. The authority citation for part 438 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 2. Amend § 438.3 by revising paragraph (d)(4) to read as follows:

§ 438.3 Standard contract requirements.

* * * * *

(d) * * *

(4) The MCO, PIHP, PAHP, PCCM or PCCM entity will not discriminate against individuals eligible to enroll on the basis of race, color, national origin, sex, or disability and will not use any policy or practice that has the effect of discriminating on the basis of race, color, or national origin, sex, or disability.

* * * * *

■ 3. Amend § 438.206 by revising paragraph (c)(2) to read as follows:

§ 438.206 Availability of services.

* * * * *

(c) * * *

(2) *Access and cultural considerations.* Each MCO, PIHP, and PAHP participates in the State's efforts to promote the delivery of services in a culturally competent manner to all enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of sex.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

■ 4. The authority citation for part 440 continues to read as follows:

Authority: 42 U.S.C. 1302.

■ 5. Revise § 440.262 to read as follows:

§ 440.262 Access and cultural conditions.

The State must have methods to promote access and delivery of services in a culturally competent manner to all beneficiaries, including those with limited English proficiency, diverse cultural and ethnic backgrounds, disabilities, and regardless of sex.

PART 460—PROGRAMS OF ALL–INCLUSIVE CARE FOR THE ELDERLY (PACE)

■ 6. The authority citation for part 460 continues to read as follows:

Authority: 42 U.S.C. 1302, 1395l, 1395eee(f), and 1396u–4(f).

■ 7. Amend § 460.98 by revising paragraph (b)(3) to read as follows:

§ 460.98 Service delivery.

* * * * *

(b) * * *

(3) The PACE organization may not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment.

* * * * *

■ 8. Amend § 460.112 by revising paragraph (a) to read as follows:

§ 460.112 Specific rights to which a participant is entitled.

(a) *Respect and nondiscrimination.* Each participant has the right to considerate, respectful care from all PACE employees and contractors at all times and under all circumstances. Each participant has the right not to be discriminated against in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment.

* * * * *

Title 45—Public Welfare

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 9. The authority citation for part 86 is revised to read as follows:

Authority: 20 U.S.C. 1681–1688; Pub. L. 100–259, 102 Stat. 28 (Mar. 22, 1988).

§ 86.2 [Amended]

■ 10. Amend § 86.2:

■ a. In paragraph (a), by adding ''1687, 1688'' after ''1686''.

■ b. In paragraph (n), by removing the words ''United States Commissioner of Education'' and adding in their place the words ''Secretary of Education''.

■ 11. Add § 86.18 to read as follows:

§ 86.18 Amendments to conform to statutory exemptions.

(a) Nothing in this part shall be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal Funds to perform or pay for an abortion.

(b) Nothing in this part shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in the preceding sentence shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

(c) This part shall be construed consistently with, as applicable, the First Amendment to the Constitution, Title IX's religious exemptions (20 U.S.C. 1681(a)(3) and 1687(4)), the Religious Freedom Restoration Act (42 U.S.C. 2000b *et seq.*), and provisions related to abortion in the Church Amendments (42 U.S.C. 300a–7), the Coats-Snowe Amendment (42 U.S.C. 238n), Section 1303 of the Patient Protection and Affordable Care Act (42 U.S.C. 18023), and appropriation rider provisions relating to abortion, to the extent they remain in effect or applicable, such as the Hyde Amendment (*e.g.,* Consolidated Appropriations Act, 2019, Pub. L. 115–245, Div. B, sec. 506–507), the Helms Amendment (*e.g.,* Continuing Appropriations Act, 2019, Pub. L. 116–6, Div. F, Titl III), and the Weldon Amendment (*e.g.,* Consolidated Appropriations Act, 2019, Pub. L. 115–245, Div. B, sec. 507(d)).

■ 12. Amend § 86.31 by revising paragraph (b) to read as follows:

§ 86.31 Education programs or activities.

* * * * *

(b) *Specific prohibitions.* Except as provided in this subsection, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-State fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

* * * * *

■ 13. Revise § 86.71 to read as follows:

§ 86.71 Enforcement procedures.

For the purposes of implementing this Part, the procedural provisions applicable to Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80.6 through 80.11 and 45 CFR part 81.

■ 14. Revise part 92 to read as follows:

PART 92—NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, SEX, AGE, OR DISABILITY IN HEALTH PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE AND PROGRAMS OR ACTIVITIES ADMINISTERED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER TITLE I OF THE PATIENT PROTECTION AND AFFORDABLE CARE ACT OR BY ENTITIES ESTABLISHED UNDER SUCH TITLE

Subpart A—General Provisions

Sec.
92.1 Purpose.
92.2 Nondiscrimination requirements.
92.3 Scope of application.
92.4 Assurances.
92.5 Enforcement mechanisms.
92.6 Relationship to other laws.

Subpart B—Specific Applications to Health Programs or Activities

92.101 Meaningful access for individuals with limited English proficiency.
92.102 Effective communication for individuals with disabilities.
92.103 Accessibility standards for buildings and facilities.
92.104 Accessibility of information and communication technology.
92.105 Requirement to make reasonable modifications.

Authority: 42 U.S.C. 18116; 5 U.S.C. 301, Pub. L. 100–259, 102 Stat. 28 (Mar. 22 1988); 42 U.S.C. 2000d *et seq.* (Title VI of the Civil Rights Act of 1964, as amended); 29 U.S.C. 794 (Section 504 of the Rehabilitation Act of 1973, as amended); 20 U.S.C. 1681 *et seq.* (Title IX of the Education Amendments of 1972, as amended); 42 U.S.C. 6101 *et seq.;* (Age Discrimination Act of 1975, as amended); *Lau* v. *Nichols,* 414 U.S. 563 (1974).

Subpart A—General Provisions

§ 92.1 Purpose.

The purpose of this part is to provide for the enforcement of Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. 18116, prohibiting discrimination under any health program or activity receiving Federal financial assistance, or under any program or activity administered by an Executive agency, or by any entity established, under Title I of such law, on the grounds of race, color, national origin, sex, age, or disability, except as provided in Title I of such law (or any amendment thereto). Section 1557 requires the application of the enforcement mechanisms under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) for purposes of violations of Section 1557 and this part.

§ 92.2 Nondiscrimination requirements.

(a) Except as provided in Title I of the Patient Protection and Affordable Care Act (or any amendment thereto), an individual shall not, on any of the grounds set forth in paragraph (b) of this section, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any health program or activity, any part of which is receiving Federal financial assistance (including credits, subsidies, or contracts of insurance) provided by the U.S. Department of Health and Human Services; or under any program or activity administered by the Department under such Title; or under any program or activity administered by any entity established under such Title.

(b) The grounds are the grounds prohibited under the following statutes:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) (race, color, national origin);

(2) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) (sex);

(3) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) (age); or

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (disability).

§ 92.3 Scope of application.

(a) Except as otherwise provided in this part, this part applies to

(1) Any health program or activity, any part of which is receiving Federal financial assistance (including credits, subsidies, or contracts of insurance) provided by the Department;

(2) Any program or activity administered by the Department under Title I of the Patient Protection and Affordable Care Act; or

(3) Any program or activity administered by any entity established under such Title.

(b) As used in this part, ''health program or activity'' encompasses all of the operations of entities principally engaged in the business of providing health care that receive Federal financial assistance as described in paragraph (a)(1) of this section. For any entity not principally engaged in the business of providing health care, the requirements applicable to a ''health program or activity'' under this part shall apply to such entity's operations only to the extent any such operation receives Federal financial assistance as described in paragraph (a)(1) of this section.

(c) For purposes of this part, an entity principally or otherwise engaged in the business of providing health insurance shall not, by virtue of such provision, be considered to be principally engaged in the business of providing health care.

§ 92.4 Assurances.

(a) *Assurances.* An entity applying for Federal financial assistance to which this part applies shall, as a condition of any application for Federal financial assistance, submit an assurance, on a form specified by the Director of the Department's Office for Civil Rights, that the entity's health programs or activities will be operated in compliance with Section 1557 and this part. A health insurance issuer seeking certification to participate in an Exchange or a State seeking approval to operate a State Exchange to which Section 1557 or this part applies shall, as a condition of certification or approval, submit an assurance, on a form specified by the Director of the Department's Office for Civil Rights, that the health program or activity will be operated in compliance with Section 1557 and this part. An applicant or entity may incorporate this assurance by reference in subsequent applications to the Department for Federal financial assistance or requests for certification to participate in an Exchange or approval to operate a State Exchange.

(b) *Duration of obligation.* The duration of the assurances required by this subpart is the same as the duration of the assurances required in the Department's regulations implementing Section 504 at 45 CFR 84.5(b).

(c) *Covenants.* When Federal financial assistance is provided in the form of real property or interest, the same conditions apply as those contained in the Department's regulations implementing Section 504 at 45 CFR 84.5(c), except that the nondiscrimination obligation applies to discrimination on all bases covered under Section 1557 and this part.

§ 92.5 Enforcement mechanisms.

(a) The enforcement mechanisms provided for, and available under, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), including under the Department's regulations implementing those statutes, shall apply for purposes of violations of § 92.2 of this part.

(b) The Director of the Office for Civil Rights has been delegated the authority to enforce 42 U.S.C. 18116 and this part, which includes the authority to handle

complaints, initiate and conduct compliance reviews, conduct investigations, supervise and coordinate compliance within the Department, make enforcement referrals to the Department of Justice, in coordination with the Office of the General Counsel and the relevant component or components of the Department, and take other appropriate remedial action as the Director deems necessary, in coordination with the relevant component or components of the Department, and as allowed by law to overcome the effects of violations of 42 U.S.C. 18116 or of this part.

§ 92.6 Relationship to other laws.

(a) Nothing in this part shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), or Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or to supersede State laws that provide additional protections against discrimination on any basis described in § 92.2 of this part.

(b) Insofar as the application of any requirement under this part would violate, depart from, or contradict definitions, exemptions, affirmative rights, or protections provided by any of the statutes cited in paragraph (a) of this section or provided by the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*); the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008 (42 U.S.C. 12181 *et seq.*), Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), the Coats-Snowe Amendment (42 U.S.C. 238n), the Church Amendments (42 U.S.C. 300a–7), the Religious Freedom Restoration Act (42 U.S.C. 2000bb *et seq.*), Section 1553 of the Patient Protection and Affordable Care Act (42 U.S.C. 18113), Section 1303 of the Patient Protection and Affordable Care Act (42 U.S.C. 18023), the Weldon Amendment (Consolidated Appropriations Act, 2019, Pub. L. 115–245, Div. B sec. 209 and sec. 506(d) (Sept. 28, 2018)), or any related, successor, or similar Federal laws or regulations, such application shall not be imposed or required.

Subpart B—Specific Applications to Health Programs or Activities

§ 92.101 Meaningful access for individuals with limited English proficiency.

(a) *Obligation.* Any entity operating or administering a health program or activity subject to this part shall take reasonable steps to ensure meaningful access to such programs or activities by limited English proficient individuals.

(b) *Specific applications*—(1) *Enforcement discretion.* In evaluating whether any entity to which paragraph (a) of this section applies has complied with paragraph (a) of this section, the Director of the Department's Office for Civil Rights may assess how such entity balances the following four factors:

(i) The number or proportion of limited English proficient individuals eligible to be served or likely to be encountered in the eligible service population;

(ii) The frequency with which LEP individuals come in contact with the entity's health program, activity, or service;

(iii) The nature and importance of the entity's health program, activity, or service; and

(iv) The resources available to the entity and costs.

(2) *Language assistance services requirements.* Where paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, requires the provision of language assistance services, such services must be provided free of charge, be accurate and timely, and protect the privacy and independence of the individual with limited English proficiency. Language assistance services may include:

(i) Oral language assistance, including interpretation in non-English languages provided in-person or remotely by a qualified interpreter for an individual with limited English proficiency, and the use of qualified bilingual or multilingual staff to communicate directly with individuals with limited English proficiency; and

(ii) Written translation, performed by a qualified translator, of written content in paper or electronic form into languages other than English.

(3) *Specific requirements for interpreter and translation services.* (i) Where paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, requires the provision of interpreter services, they must be provided by an interpreter who:

(A) Adheres to generally accepted interpreter ethics principles, including client confidentiality;

(B) Has demonstrated proficiency in speaking and understanding at least spoken English and the spoken language in need of interpretation; and

(C) Is able to interpret effectively, accurately, and impartially, both receptively and expressly, to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(ii) Where paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, requires the provision of translation services for written content (in paper or electronic form), they must be provided by a translator who:

(A) Adheres to generally accepted translator ethics principles, including client confidentiality;

(B) Has demonstrated proficiency in writing and understanding at least written English and the written language in need of translation; and

(C) Is able to translate effectively, accurately, and impartially to and from such language(s) and English, using any necessary specialized vocabulary, terminology and phraseology.

(iii) If remote audio interpreting services are required to comply with paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, the entity to which Section 1557 applies (as defined in § 92.3 of this part) shall provide:

(A) Real-time, audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality audio without lags or irregular pauses in communication;

(B) A clear, audible transmission of voices; and

(C) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the remote interpreting services.

(4) *Restricted use of certain persons to interpret or facilitate communication.* If an entity is required by paragraph (a) of this section, in light of the entity's individualized assessment of the four factors set forth in paragraph (b)(1) of this section, to provide interpretation services, such entity shall not:

(i) Require an individual with limited English proficiency to provide his or her own interpreter;

(ii) Rely on an adult accompanying an individual with limited English proficiency to interpret or facilitate communication, except

(A) In an emergency involving an imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual with limited English proficiency immediately available;

(B) Where the individual with limited English proficiency specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances;

(iii) Rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public, where there is no qualified interpreter for the individual with limited English proficiency immediately available; or

(iv) Rely on staff other than qualified bilingual/multilingual staff to communicate directly with individuals with limited English proficiency.

(c) *Acceptance of language assistance services is not required.* Nothing in this section shall be construed to require an individual with limited English proficiency to accept language assistance services.

§ 92.102 Effective communication for individuals with disabilities.

(a) Any entity operating or administering a program or activity under this part shall take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others in such programs or activities, in accordance with the standards found at 28 CFR 35.160 through 35.164. Where the regulatory provisions referenced in this section use the term ''public entity,'' the term ''entity'' shall apply in its place.

(b) A recipient or State Exchange shall provide appropriate auxiliary aids and services, including interpreters and information in alternate formats, to individuals with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(1) Auxiliary aids and services include:

(i) Interpreters on-site or through video remote interpreting (VRI) services, as defined in 28 CFR 35.104 and 36.303(f); note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunication products and systems, text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible information and communication technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; and

(ii) Readers; taped texts; audio recordings; Braille materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs; large print materials; accessible information and communication technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision.

(2) When an entity is required to provide an interpreter under subsection (b), the interpreting service shall be provided to individuals free of charge and in a timely manner, via a remote interpreting service or an onsite appearance, by an interpreter who

(i) Adheres to generally accepted interpreter ethics principles, including client confidentiality; and

(ii) Is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, terminology and phraseology.

(3) An interpreter for an individual with a disability for purposes of this section can include, for example, sign language interpreters, oral transliterators (individuals who represent or spell in the characters of another alphabet), and cued language transliterators (individuals who represent or spell by using a small number of handshapes).

(c) Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment, as defined and construed in the Rehabilitation Act, 29 U.S.C. 705(9)(B), which incorporates the definition of disability in the Americans with Disabilities Act (ADA), as amended (42 U.S.C. 12102 *et seq.*). Where this part cross-references regulatory provisions that use the term ''handicap,'' ''handicap'' means ''disability'' as defined in this section.

§ 92.103 Accessibility standards for buildings and facilities.

(a) Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange shall comply with the 2010 Standards, if the construction or alteration was commenced on or after July 18, 2016, except that if a facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange, was not covered by the 2010 Standards prior to July 18, 2016, such facility or part of a facility shall comply with the 2010 Standards if the construction was commenced after January 18, 2018. Departures from particular technical and scoping requirements by the use of other methods are permitted where substantially equivalent or greater access to and usability of the facility is provided. All newly constructed or altered buildings or facilities subject to this section shall comply with the requirements for a ''public building or facility'' as defined in section 106.5 of the 2010 Standards.

(b) Each facility or part of a facility in which health programs or activities under this part are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange in conformance with the 1991 Standards at appendix D to 28 CFR part 36 or the 2010 Standards shall be deemed to comply with the requirements of this section and with 45 CFR 84.23(a) and (b) with respect to those facilities, if the construction or alteration was commenced on or before July 18, 2016. Each facility or part of a facility in which health programs or activities are conducted that is constructed or altered by or on behalf of, or for the use of, a recipient or State Exchange in conformance with UFAS shall be deemed to comply with the requirements of this section and with 45 CFR 84.23(a) and (b), if the construction was commenced before July 18, 2016 and such facility was not covered by the 1991 Standards or 2010 Standards.

(c) For purposes of this part:

(1) ''1991 Standards'' refers to the 1991 Americans with Disabilities Act Standards for Accessible Design at appendix D to 28 CFR part 36.

(2) ''2010 Standards'' refers to the 2010 ADA Standards for Accessible Design, as defined in 28 CFR 35.104.

(3) ''UFAS'' refers to the Uniform Federal Accessibility Standards as promulgated in 49 FR 31528 (Aug. 7, 1984).

§ 92.104 Accessibility of information and communication technology.

(a) Entities required to comply with § 92.2, unless otherwise exempted by this part, shall ensure that their health programs or activities provided through information and communication technology are accessible to individuals with disabilities, unless doing so would result in undue financial and administrative burdens or a fundamental alteration in the nature of the health programs or activities. When undue financial and administrative burdens or a fundamental alteration exist, the covered entity shall provide information in a format other than an electronic format that would not result in such undue financial and administrative burdens or a fundamental alteration, but would ensure, to the maximum extent possible, that individuals with disabilities receive the benefits or services of the health program or activity that are provided through information and communication technology.

(b) A recipient or State Exchange shall ensure that its health programs or activities provided through websites comply with the requirements of Title II of the Americans with Disabilities Act (42 U.S.C. 12131 through 12165).

(c) For purposes of this part, ''information and communication technology'' (ICT) means information technology and other equipment, systems, technologies, or processes, for which the principal function is the creation, manipulation, storage, display, receipt, or transmission of electronic data and information, as well as any associated content. Examples of ICT include computers and peripheral equipment; information kiosks and transaction machines; telecommunications equipment; customer premises equipment; multifunction office machines; software; applications; websites; videos; and, electronic documents.

§ 92.105 Requirement to make reasonable modifications.

Any entity to which Section 1557 applies (as defined in § 92.3 of this part) shall make reasonable modifications to its policies, practices, or procedures when such modifications are necessary to avoid discrimination on the basis of disability, unless the covered entity can demonstrate that making the modifications would fundamentally alter the nature of the health program or activity. For the purposes of this section, the term ''reasonable modifications'' shall be interpreted in a manner consistent with the term as set forth in the regulation promulgated under Title II of the Americans with Disabilities Act, at 28 CFR 35.130(b)(7).

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 15. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 18021, 18031, 18041, 18044, 18054, 18061, 18063, 18071, and 18082, 26 U.S.C. 36B, 31 U.S.C. 9701.

■ 16. Amend § 147.104 by revising paragraph (e) to read as follows:

§ 147.104 Guaranteed availability of coverage.

* * * * *

(e) *Marketing.* A health insurance issuer and its officials, employees, agents and representatives must comply with any applicable State laws and regulations regarding marketing by health insurance issuers and cannot employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in health insurance coverage or discriminate based on an individual's race, color, national origin, present or predicted disability, age, sex, expected length of life, degree of medical dependency, quality of life, or other health conditions.

* * * * *

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

Subpart B—General Standards Related to the Establishment of an Exchange

■ 17. The authority citation for Part 155 continues to read as follows:

Authority: 42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 18. Amend § 155.120 by revising paragraph (c)(1)(ii) to read as follows:

§ 155.120 Non-interference with Federal law and non-discrimination standards.

* * * * *

(c) * * *

(1) * * *

(ii) Not discriminate based on race, color, national origin, disability, age, or sex.

* * * * *

■ 19. Amend § 155.220 by revising paragraph (j)(2)(i) to read as follows:

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

* * * * *

(j) * * *

(2) * * *

(i) Provide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchanges, QHPs offered through the Federally-facilitated Exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment website that HHS determines could mislead a consumer into believing they are visiting HealthCare.gov), coercive, or discriminates based on race, color, national origin, disability, age, or sex;

* * * * *

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 20. The authority citation for part 156 continues to read as follows:

Authority: 5 U.S.C. 552; 42 U.S.C. 300jj–11 and 300jj–14.

■ 21. Amend § 156.200 by revising paragraph (e) to read as follows:

§ 156.200 QHP issuer participation standards.

* * * * *

(e) *Non-discrimination.* A QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, or sex.

* * * * *

■ 22. Amend § 156.1230 by revising paragraph (b)(3) to read as follows:

§ 156.1230 Direct enrollment with the QHP issuer in a manner considered to be through the Exchange.

* * * * *

(b) * * *

(3) The QHP issuer must provide consumers with correct information, without omission of material fact, regarding the Federally-facilitated Exchanges, QHPs offered through the Federally-facilitated Exchanges, and insurance affordability programs, and refrain from marketing or conduct that is misleading (including by having a direct enrollment website that HHS determines could mislead a consumer into believing they are visiting *HealthCare.gov*), coercive, or discriminates based on race, color, national origin, disability, age, or sex.

* * * * *

Dated: May 23, 2019.

Alex M. Azar II,

Secretary, Department of Health and Human Services.

[FR Doc. 2019–11512 Filed 6–13–19; 8:45 am]

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Part III

The President

Executive Order 13874—Modernizing the Regulatory Framework for Agricultural Biotechnology Products

Federal Register
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Friday, June 14, 2019

Presidential Documents

Title 3—

The President

Executive Order 13874 of June 11, 2019

Modernizing the Regulatory Framework for Agricultural Biotechnology Products

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to conduct Federal oversight of agricultural biotechnology products that is science-based, timely, efficient, and transparent, it is hereby ordered as follows:

Section 1. *Purpose.* Recent advances in biotechnology have the potential to revolutionize agriculture and thereby enhance rural prosperity and improve the quality of American lives. Biotechnology can help the Nation meet its food production needs, raise the productivity of the American farmer, improve crop and animal characteristics, increase the nutritional value of crop and animal products, and enhance food safety. In order to realize these potential benefits, however, the United States must employ a science-based regulatory system that evaluates products based on human health and safety and potential benefits and risks to the environment. Such a system must both foster public confidence in biotechnology and avoid undue regulatory burdens.

The September 2016 National Strategy for Modernizing the Regulatory System for Biotechnology Products (National Strategy) and the January 2017 Update to the Coordinated Framework for the Regulation of Biotechnology (Coordinated Framework) were important steps in clarifying Federal regulatory roles and responsibilities with respect to agricultural biotechnology. The Agriculture and Rural Prosperity Task Force established in April 2017 recommended additional steps to further modernize the regulatory framework for agricultural biotechnology products so as to facilitate innovation, ensure coordination across regulatory agencies, and safely enable billions of people across America and the world to reap the benefits of such products. The directives below are intended to implement those recommendations.

Sec. 2. *Definition.* For the purposes of this order, the term ''product of agricultural biotechnology'' refers to a plant or animal, or a product of such a plant or animal, developed through genetic engineering or through the targeted in vivo or in vitro manipulation of genetic information, with the exception of plants or animals, or the products thereof, developed for non-agricultural purposes, such as to produce pharmaceutical or industrial compounds.

Sec. 3. *Policy.* It is the policy of the Federal Government to protect public health and the environment by adopting regulatory approaches for the products of agricultural biotechnology that are proportionate responses to the risks such products pose, and that avoid arbitrary or unjustifiable distinctions across like products developed through different technologies. Any regulatory regime for products of agricultural biotechnology should ensure public confidence in the oversight of such products and also promote future innovation and competitiveness. To support these goals, the Federal Government shall:

(a) base regulatory decisions on scientific and technical evidence, and take into account, as appropriate and consistent with applicable law, economic factors;

(b) review regulatory applications for products of agricultural biotechnology in a timely and efficient manner;

(c) ensure the transparency, predictability, and consistency of the regulation of products of agricultural biotechnology, to the extent permitted by law;

(d) as appropriate and consistent with applicable law, develop regulations and guidance through processes that provide fair notice to the public and allow for its participation;

(e) make regulatory determinations based on risks associated with the product and its intended end use; and

(f) promote trade in products of agricultural biotechnology by urging trading partners to adopt science- and risk-based regulatory approaches.

Sec. 4. *Regulatory Streamlining.* The Secretary of Agriculture (Secretary), the Administrator of the Environmental Protection Agency (Administrator), and the Commissioner of Food and Drugs (Commissioner), to the extent consistent with law and the principles set forth in section 3 of this order, shall:

(a) within 180 days of the date of this order, identify relevant regulations and guidance documents within their respective jurisdictions that can be streamlined to ensure that products of agricultural biotechnology are regulated in accordance with the policy set forth in section 3 of this order and take the steps appropriate and necessary to accomplish such streamlining; and

(b) use existing statutory authority, as appropriate, to exempt low-risk products of agricultural biotechnology from undue regulation.

Sec. 5. *Unified Biotechnology Web-based Platform.* To ensure that innovators can easily navigate the regulatory system for products of agricultural biotechnology, the Department of Agriculture, the Environmental Protection Agency, and the Food and Drug Administration (collectively, the ''agencies'') shall, within 180 days of the date of this order, work together to design a plan to establish a web-based platform that contains and provides links to relevant United States Government regulatory information. This web-based platform shall allow developers of products of agricultural biotechnology to submit inquiries about a particular product and promptly receive from the agencies a single, coordinated response that provides, to the extent practicable, information and, when appropriate, informal guidance regarding the process that the developers must follow for Federal regulatory review. The web-based platform shall be funded by the Department of Agriculture, with the other agencies providing support, to the extent consistent with applicable law and within existing appropriations, through appropriate interagency agreements, including agreements under the Economy Act.

Sec. 6. *Review of Current Authorities, Regulations, and Guidance.* (a) Each of the agencies shall, as appropriate, conduct a review of its regulations and guidance that may apply to genome-edited-specialty-crop-plant products designed to have significant health, agricultural, or environmental benefits, in particular those that are likely to benefit rural communities significantly. Based on the findings of its review, each of the agencies shall take steps to update its regulations and guidance, as necessary and appropriate, to remove undue barriers that impede small, private United States developers, the United States Government, and academic institutions from bringing innovative and safe genome-edited-specialty-crop-plant products to the marketplace.

(b) Every 90 days after the date of this order, for a period of 2 years, each of the agencies shall provide an update regarding its progress in implementing section 6 of this order to the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, the Assistant to the President for Economic Policy, and the Assistant to the President for Domestic Policy.

Sec. 7. *Domestic Engagement Strategy.* (a) Within 180 days of the date of this order, the Secretary, in coordination with the Administrator, the Commissioner, and any other Administration officials that the Secretary deems appropriate, shall develop an action plan to facilitate engagement with consumers in order to build public confidence in, and acceptance of, the use of safe biotechnology in agriculture and the food system.

(b) In developing the plan described in subsection (a) of this section, the following shall be considered: supporting research and education on effective science communication; developing educational materials that integrate agricultural biotechnology into science education; creating consumer-facing web content; and developing other outreach materials that clearly communicate the demonstrated benefits of agricultural biotechnology, the safety record of the regulatory system, and how biotechnology can address agricultural challenges. The strategy shall take into account the ongoing work of the Agricultural Biotechnology Education and Outreach Initiative, which calls on the Food and Drug Administration to work with the Department of Agriculture to conduct public education and outreach on agricultural biotechnology and food and animal-feed ingredients derived from such technology. The Secretary shall coordinate with State leaders in the fields of public health and agriculture as part of this strategy.

Sec. 8. *International Outreach.* Within 120 days of the date of this order, the Secretary and the Secretary of State (collectively, the ''Secretaries''), in consultation with the United States Trade Representative, the Administrator, the Commissioner, and any other Administration officials that the Secretaries deem appropriate, shall develop an international communications and outreach strategy to facilitate engagement abroad with policymakers, consumers, industry, and other stakeholders. The goal of the strategy shall be to increase international acceptance of products of agricultural biotechnology in order to open and maintain markets for United States agricultural exports abroad.

Sec. 9. *International Trade Strategy.* Within 120 days of the date of this order, the United States Trade Representative, in consultation with the Secretaries and the Trade Policy Staff Committee, shall develop an international strategy to remove unjustified trade barriers and expand markets for products of agricultural biotechnology.

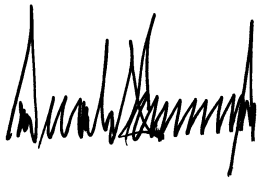
Sec. 10. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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



THE WHITE HOUSE,
June 11, 2019.

[FR Doc. 2019–12802
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Part IV

The President

Notice of June 13, 2019—Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Democratic Processes or Institutions of Belarus

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Presidential Documents

Title 3—

The President

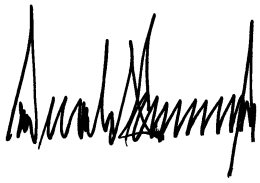
Notice of June 13, 2019

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons To Undermine Democratic Processes or Institutions of Belarus

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections; to commit human rights abuses related to political repression, including detentions and disappearances; and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
June 13, 2019.

[FR Doc. 2019–12826
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S. 1436/P.L. 116–21
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